

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 CS Areas of Critical State Concern
SPONSOR(S): Sorensen
TIED BILLS: **IDEN./SIM. BILLS:** SB 2098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>8 Y, 0 N, w/CS</u>	<u>Camechis</u>	<u>Hamby</u>
2) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law 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any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs, and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development. Current law also establishes a process for removing the designation as an area of critical state concern upon the approval of the Administration Commission. This bill:

- Creates a new process for removing the designation of the Florida Keys Area as an area of critical state concern and removes designation unless the Administration Commission finds that substantial progress toward achieving specified goals has not been achieved;
- Provides for continued state review of local regulations for compliance with wastewater treatment and hurricane evacuation goals;
- Allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section for 20 years, and may continue to levy the tax if the county adopts an ordinance reauthorizing levy of the tax and the continued levy is approved at a referendum of the voters;
- Provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the local government infrastructure surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation for 20 years, and may continue to do so if the county adopts an ordinance providing for such continued use;
- Allows a land authority to acquire property when necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area. However, the land authority may only acquire property located within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation;
- Provides that a land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to exist and exercise all powers granted by law until terminated by law or action of the governing board;
- Allows an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to enact an ordinance governing sewerage systems; and
- Preserves existing state liability, if any, in regulatory takings cases if local regulations are unchanged.

The bill does not prohibit the future redesignation as an area of critical state concern. This bill preserves existing taxing authority for certain areas of critical state concern, and preserves state liability, if any, in regulatory takings cases in the Florida Keys Area. The fiscal impact of these provisions is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides for the continued levy of taxes after designation as an area of critical state concern is removed.

Provide limited government: This bill may reduce the administrative burden on the Department of Community Affairs and the local governments in the Florida Keys Area of Critical State Concern.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Keys Area of Critical State Concern Generally

Florida's area of critical state concern program (ACSC) was created in 1972 as part of the Environmental Land and Water Management Act of 1972.¹ In 1979, the Legislature enacted s. 380.0552, F.S., designating by statute the Florida Keys Area of Critical State Concern.² In 1986, the Legislature substantially amended s. 380.0552, F.S., designating the section as the "Florida Keys Area Protection Act" and including provisions to provide legislative intent, ratify the administrative designation of the Florida Keys Area as an area of critical state concern, establish a process for removal of the designation, provide principles for guiding development, and establish a process for modifying comprehensive plans and land development regulations. The legislative intent of the Act is:

- To establish a land use management system that protects the natural environment of the Florida Keys.
- To establish a land use management system that conserves and promotes the community character of the Florida Keys.
- To establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services.
- To provide for affordable housing in close proximity to places of employment in the Florida Keys.
- To establish a land use management system that promotes and supports a diverse and sound economic base.
- To protect the constitutional rights of property owners to own, use, and dispose of their real property.
- To promote coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

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 (DCA). 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.

Section 380.0552(7), F.S., establishes principles for guiding development in the Florida Keys Area of Critical State Concern. State, regional, and local agencies and units of government in the Florida Keys Area must coordinate their plans and conduct their programs and regulatory activities consistent with the following principles for guiding development:

¹ ch. 72-317, L.O.F.

² ch. 79-73, L.O.F.

- To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.
- To limit the adverse impacts of development on the quality of water throughout the Florida Keys.
- To enhance natural scenic resources, promote the aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.
- To protect the historical heritage of the Florida Keys.
- To 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 and disposal facilities;
 - Solid waste 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.
- To limit the adverse impacts of public investments on the environmental resources of the Florida Keys.
- To make available adequate affordable housing for all sectors of the population of the Florida Keys.
- To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan.
- To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

A process for removing the designation as an area of critical state concern is provided in s. 380.0552(4), F.S. Under this provision, the Department of Community Affairs (DCA) must recommend to the Administration Commission (Commission) the removal of the designation if the DCA determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area, continue to carry out the legislative intent, and are in compliance with the principles for guiding development. If the Commission concurs with the recommendations of the DCA to remove the designation, the Commission must, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The DCA must make this determination annually until the designation is removed.

Generally, the DCA reviews three basic requirements to determine whether to recommend to the Governor and Cabinet the repeal of the designation of an area of critical state concern:

- Adoption of adequate comprehensive plans consistent with the Principles for Guiding Development and the periodic evaluation of the plans;
- Adoption of adequate land development regulations to implement the plan and the Principles for Guiding Development; and
- Administration of the plans and regulations in a manner that ensures protection of the resources and the demonstration of proper implementation based upon the DCA's review and monitoring of the issuance of permits and development orders and the lack of any legal action filed by the DCA.

Administration Commission rule 28-20.110, F.A.C., establishes a 10-year work plan that, in effect, is an amendment to the county comprehensive plan. In 2003, the rule was amended to focus the plan on four issues: (1) habitat protection; (2) wastewater treatment; (3) storm water treatment; and (4) affordable housing. Currently, the county is in Year Nine of the workplan, which ends on July 12, 2006. The workplan objectives for Year Nine include initiation of the process to obtain bond financing secured by connection fees and securing sites for wastewater facilities. The objectives for Year Ten, which ends on July 12, 2007, relate exclusively to the construction, financing, and operation of wastewater treatment facilities. Pursuant to the rule, Monroe County and the DCA must report to the Commission on an annual basis documenting the degree to which the 10-year work program objectives have been achieved. The Commission must consider the findings and recommendations provided in the reports and determine whether substantial progress has been achieved toward accomplishing the tasks of the work program. On January 31, 2006, the Commission found that substantial progress had been made through Years Seven and Year Eight of the workplan.

In its 2005 Annual Report to the Administration Commission, the DCA identified four remaining critical needs in the Keys Area:

- Water quality improvement;
- Habitat protection;
- Affordable housing; and
- Hurricane evacuation.

In its report, the DCA indicated that “[t]he critical planning challenges still remaining in the Florida Keys continue to include funding for construction of wastewater treatment facilities, land acquisition for conservation purposes and affordable housing sites, elimination of direct discharge storm water outfalls, storm water retrofits for US Highway 1 and hurricane evacuation capability.”

EFFECT OF PROPOSED CHANGES -- Section-by-Section Analysis

Section 1.

Current Situation

Currently, s. 125.0108, F.S., provides that any county creating a land authority pursuant to s. 380.0663(1), F.S., is authorized to levy by ordinance, in the area of the county designated as an area of critical state concern, a tourist impact tax, or throughout the county if the area or areas of critical state concern are greater than 50 percent of the land area of the county. The tax is not be effective unless and until land development regulations and a local comprehensive plan that meet the requirements of ch. 380, F.S., become effective and the tax is approved by referendum of the voters. The tourist impact tax must be levied at the rate of 1 percent of each dollar and major fraction thereof of the total consideration charged for such taxable privilege. Every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such establishment is exempt from the tax imposed

by s. 212.03, F.S., is exercising a taxable privilege. When receipt of consideration is by way of property other than money, the tax must be levied and imposed on the fair market value of such nonmonetary consideration.

All tax revenues generated by the tourist impact tax, less administrative costs, must be distributed as follows:

- Fifty percent must be transferred to the land authority to be used to purchase property in the area of critical state concern for which the revenue is generated. An amount not to exceed 5 percent may be used for administration and other costs incident to such purchases.
- Fifty percent must be distributed to the governing body of the county where the revenue was generated and must be used to offset the loss of ad valorem taxes due to acquisitions provided for by this act.

Effect of Proposed Changes

This section amends s. 125.0108, F.S., to allow a county that has levied the tourist impact tax authorized by this section in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section for 20 years, and may continue to levy the tax after 20 years if the county adopts an ordinance reauthorizing levy of the tax and the continued levy is approved at a referendum of the voters.

Section 2.

Current Situation

Section 212.055(2), F.S., authorizes the governing authority in each county to levy a discretionary sales surtax of 0.5 percent or 1 percent, also known as the Local Government Infrastructure Surtax. The levy of the surtax must be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and takes effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of the surtax may be extended only by approval of a majority of the electors of the county voting in a referendum.

The proceeds of the surtax and any interest accrued thereto must be expended by the school district or within the county and municipalities within the county or, in the case of a negotiated joint county agreement, within another county, 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 close by order of the Department of Environmental Protection. Neither the proceeds nor any interest accrued thereto may be used for operational expenses of any infrastructure, except that any county with a population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection may use the proceeds or any interest

Under s. 212.055(2)(f), F.S., a county designated as an area of critical state concern on the effective date of the section, and that imposed the 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 determined to be 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.

In addition, those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section.

Effect of Proposed Changes

This bill amends s. 212.055(2)(f), F.S., to provide that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after the removal of the designation for 20 years, and may continue to levy the tax after 20 years if the county adopts an ordinance providing for such continued use.

Section 3.

Current Situation

A process for removing the designation as an area of critical state concern is provided in s. 380.0552(4), F.S. Under this provision, the DCA must recommend to the Administration Commission the removal of the designation if the DCA determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area, continue to carry out the legislative intent, and are in compliance with the principles for guiding development. If the Commission concurs with the recommendations of the DCA to remove the designation, the Commission must, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The DCA must make this determination annually until the designation is removed.

Effect of Proposed Changes

This bill amends s. 380.0552(4), F.S., to provide a new procedure for dedesignating the Florida Keys Area as an area of critical state concern. Under the new procedure, between July 12, 2007, and August 30, 2007, the DCA must submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. Subsequent to receipt of the report, the Commission must determine, prior to October 1, 2007, whether substantial progress has been achieved toward accomplishing the tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section is removed on October 1, 2007, unless the Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Commission must initiate rulemaking to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If, after receipt of the DCA's report, the Commission finds that substantial progress toward accomplishing the tasks of the work program has not been achieved, the Commission must provide a written report to the Monroe County Commission within 30 days after making such finding detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

If the designation of the Florida Keys Area as an area of critical state concern is not removed, the DCA must submit a written annual report to the Commission on November 1 of each year, until such time as the designation is removed, describing the progress of the Florida Keys Area toward accomplishing remaining tasks under the work program and providing a recommendation as to whether substantial

progress toward accomplishing the tasks of the work program has been achieved. The Commission must determine, within 45 days after receipt of the annual report, whether substantial progress has been achieved toward accomplishing the remaining tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section is removed unless the Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Commission must initiate rulemaking to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If the Commission finds that substantial progress has not been achieved, the Commission must provide to the Monroe County Commission, within 30 days after making its finding, a report detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

The term "work program" means the 10-year work program set forth in ch. 28-20.110, F.A.C., on January 1, 2006, excluding amendments to the work program that take effect after January 1, 2006.

Judicial review of the Administration Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program must be sought in the circuit court in Leon County, Florida within 30 days after rendition of the Administration Commission determination. The Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program must be upheld if it is fairly debatable and is not subject to administrative review under ch. 120, F.S., the Florida Administrative Procedure Act.

After removal of the designation as an area of critical state concern, the DCA must review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, the boundaries of which were described in ch. 28-29, F.A.C., as of January 1, 2006, for compliance with the following:

1. Adoption of construction schedules for wastewater facilities improvements in the annually adopted Capital Improvements Element and adoption of standards for the construction of wastewater treatment facilities that meet or exceed the criteria of Chapter 99-395, Laws of Florida.
2. Adoption of 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 shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

All procedures and penalties described in s. 163.3184, F.S., are applicable to this review. In addition to reviewing proposed local comprehensive plans and amendments for compliance as defined in s. 163.3184, F.S.

Section 4.

Current Situation

Section 380.0663, F.S., authorizes each county in which one or more areas of critical state concern are located to create, by ordinance, a land authority to be governed by the county commission. Section 380.0666, F.S., grants powers to these authorities, including the power to acquire and dispose of real and personal property or any interest therein when acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to very-low-income, low-income, or moderate-income persons, as defined in s. 420.0004³, or provide access to management of acquired lands; to acquire interests in

³ "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the

land by means of land exchanges; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority may make such acquisition only if:

- The acquisition is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;
- The property acquired is within an area designated as an area of critical state concern at the time of acquisition; and
- The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for acquisition, to coordinate the acquisition and disposition of such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for eventual resale to other public land acquisition programs.

Effect of Proposed Changes

The bill amends s. 380.0666, F.S., to allow a land authority to acquire property when necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area. However, the land authority may only acquire property located within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation.

Section 5.

Current Situation

Section 380.0674, F.S., provides that the land authority and its corporate existence continue until terminated by law or action of the governing board of the county that established it; however, no such law or action may take effect so long as the land authority has bonds outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of the land authority, all its rights and properties in excess of its obligations pass to and be vested in the state.

Effect of Proposed Changes

This bill amends s. 380.0674, F.S., to provide that a land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to exist and exercise all powers granted by this chapter until terminated by law or action of the governing board.

Section 6.

Current Situation

metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Chapter 99-395, L.O.F., provides that notwithstanding any provision of ch. 380, part I, F.S., to the contrary, a local government within the Florida Keys Area of critical state concern may enact an ordinance that:

- o Requires connection to a central sewerage system within 30 days of notice of availability of services; and
- o Provides a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

Effect of Proposed Changes

This bill amends ch. 99-395, L.O.F., to allow an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to enact such an ordinance.

Section 7.

This bill provides that, if the designation of the Florida Keys Area as an area of critical state concern is removed, the state remains liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in ch. 28-29, F.A.C., and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), F.S. If, after the designation of the Florida Keys Area as an area of critical state concern is removed, an inverse condemnation action is initiated based upon land use regulations that were not adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission and in effect on the date of the designation's removal, the state's liability in the inverse condemnation action shall be determined by the courts in the manner in which the state's liability is determined in areas that are not areas of critical state concern. The state is provided standing to appear in any inverse condemnation action.

Section 8.

This section provides that the bill is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 125.0108, F.S.; authorizing the continued levy of the tourist impact tax in areas of critical state concern removed from designation.

Section 2. Amends s. 212.055, F.S.; authorizing certain counties to continue the use of a portion of local government infrastructure surtax proceeds for certain purposes after removal of designation of an area as an area of critical state concern.

Section 3. Amends s. 380.0552, F.S.; providing requirements, procedures, and criteria for Administration Commission removal of designation of the Florida Keys Area as an area of critical state concern; requiring removal of the designation under certain circumstances; providing for judicial review of Administration Commission determinations.

Section 4. Amends s. 380.0666, F.S.; revising the powers of a land authority in an area of critical state concern to acquire property to provide affordable housing; providing for continued power of a land authority to acquire property within an area of critical state concern removed from designation.

- Section 5. Amends s. 380.0674, F.S.; providing for the continuation of a land authority in an area of critical state concern after removal of the designation.
- Section 6. Amends s.4, ch. 99-395, L.O.F.; authorizing local governments in areas of critical state concern removed from designation to continue to enact ordinances relating to central sewerage systems.
- Section 7. Provides for continuation of existing state liability in certain inverse condemnation actions related to the Florida Keys Area after removal of designation.
- Section 8. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: This bill preserves existing state liability, if any, in regulatory takings cases if local regulations are unchanged. The fiscal impact of this provision, if any, is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section. The bill also provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation.

2. Expenditures: The reduction in administrative review requirements may reduce the costs to local governments of obtaining approval of comprehensive plans, plan amendments, and land use regulations.

- C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section. The bill also provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation.

- D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill does not appear to be subject to the provisions of Art. XII, s. 8(a)(b) or (c), State constitution, regarding mandates.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill requires the Administration Commission to initiate rulemaking to repeal rules related to the Florida Keys Area of Critical State Concern upon removal of its designation as an area of critical state concern.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Local Government Council adopted two amendments offered by Representative Sorensen for the purpose of:

- Modifying the provision governing appeals of Administration Commission decisions to the circuit court for clarification purposes and to establish venue in Leon County;
- Requiring, after designation as an area of critical state concern is removed, review of future proposed comprehensive plans and plan amendments for compliance with the adoption of construction schedules for wastewater facilities improvements in the annually adopted Capital Improvements Element and adoption of standards for the construction of wastewater treatment facilities, as well as compliance with the adoption of 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;
- Allowing the county to continue levying the tourist impact tax after 20 years only if the county adopts an ordinance reauthorizing levy of the tax and the continued levy of the tax is approved by referendum; and
- Allowing a county to continue using up to 10 percent of the Local Infrastructure Surtax proceeds for any public purpose other than for infrastructure for 20 years, and may continue to do so after 20 years only if the county adopts an ordinance providing for such continued use of the surtax proceeds.