

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: SB 2098

INTRODUCER: Senator Bennett

SUBJECT: Areas of Critical State Concern

DATE: March 18, 2006 REVISED: 03/21/06 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Fav/2 amendments
2.	_____	_____	<u>EP</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GE</u>	_____
5.	_____	_____	<u>TA</u>	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill contains a number of provisions affecting an area that was designated as an area of critical state concern (ACSC) for at least 20 consecutive years before the removal of the designation. These provisions include:

- The authority to continue to levy the tourist impact tax after removal of the designation;
- The authority to continue to use up to 10 percent of the tourist impact tax proceeds for a public purpose other than for infrastructure purposes after the removal of the designation;
- The authority to continue the exercise of all powers granted to its land authority under ch. 380, F.S., until terminated by the governing board;
- The authority to enact an ordinance that requires connection to a central sewerage system within 30 days of notice of the availability of services; and
- The exercise of its land authority powers to acquire real property in the area that was an ACSC for at least 20 consecutive years before the removal of the designation.

Also, the bill provides a new process for the removal of the designation as an ACSC for the Florida Keys. It revises the scope of a land authority's powers with respect to the income level for affordable housing. The bill provides the state is liable in certain inverse condemnation proceedings in Monroe County that are based on land use regulations adopted in response to instructions or rule of the Administration Commission.

This bill substantially amends the following sections of the Florida Statutes: 125.0108, 212.055, 380.0552, 380.0666, and 380.0674. It also amends section 4 of ch. 99-395, Laws of Florida.

II. Present Situation:

Designation of an Area of Critical of Critical State Concern – The ACSC program protects areas of the state where unsuitable land development would endanger resources of regional or statewide significance and ensures orderly and well-planned growth of the area by regulating its development. The governor and cabinet, sitting as the Administration Commission, designate ACSCs upon the recommendation of the Department of Community Affairs (DCA). Designation may be made for areas with significant environmental resources, historical resources or sites, or areas affected by an existing or proposed major public facility. ACSCs have been established in the Florida Keys and the City of Key West, the Green Swamp, the Big Cypress Swamp, and the City of Apalachicola (Apalachicola Bay).¹

Section 380.0552, F.S., governs the administration of the Florida Keys ACSC. This ACSC was designated in 1979 by the Administration Commission and ratified by the Legislature in 1986. The boundaries² of this ACSC include all lands in Monroe County, except:

- the portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of the park;
- all lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments;
- federal properties; and
- the area within the incorporated boundaries of the City of Key West.

State, regional, and local agencies and units of government in the Florida Keys ACSC are required to coordinate their plans and conduct their programs and regulatory activities consistent with the following principles for guiding development as set forth in s. 380.0552(7), F.S.:

- 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.

¹ See s. 380.05, F.S.; <http://www.csc.noaa.gov/opis/html/summary/florida/felwma.htm>.

² See 28-29.002, F.A.C.

- 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 postdisaster 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.

The 1979 designation of the Florida Keys as an Area of Critical State Concern required the removal of the City of Key West upon approval of the land use element of the city's local comprehensive plan. This approval occurred in 1981. Based on the recommendation of the state land planning agency and the Keys Resource Planning and Management Committee, the City of Key West was again designated as an ACSC.³ The guiding principles for development within this area include the conservation and protection of the natural, environmental, historical and economic resources, the scenic beauty, and the public facilities within the ACSC.

One of the objectives to be achieved is to minimize the adverse impacts of development on the quality of water in and around the City of Key West and throughout the Florida Keys. To accomplish this objective, the City of Key West is required to establish criteria and regulations for the methods and location of the disposal of all solid waste and waste-water effluents and residuals. Site alteration and subdivision regulations must provide for:

- Retention of runoff or discharge of such runoff into adequately sized natural vegetative filtration areas in a manner approximating the natural runoff regime;
- Permanent drainage systems which make maximum use of natural drainage patterns, vegetative retention and filtration; and

³ See Chapter 28-36, F.A.C.

- Maintenance of habitat for wildlife species, prevent the introduction of noxious vegetation, and minimize the alteration of transitional wetlands.

Land Use Planning in the Florida Keys ACSC – The enactment, amendment, or rescission of a land development regulation or element of the local comprehensive plan in the Florida Keys ACSC is not effective until approved by the state land planning agency.⁴ The proposed changes are reviewed by the state land planning agency to determine if they are consistent with the principles for guiding development in the area and must be approved or rejected within 60 days of receipt. No more than once per year, the state land planning agency may, after consulting with the appropriate local government, recommend the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan. The Administration Commission has 45 days from receipt to act on this recommendation.

In addition to the state oversight of land use planning, Monroe County has a rate of growth ordinance (ROGO) that limits the number of residential permits the county issues in a specified time period. The ordinance divides the county into 3 regions and the quota of permits and the time period is specified for each.

Removal of the ACSC Designation for the Florida Keys – Current law has a provision for removal of the ACSC designation for the Florida Keys. Section 380.0552, F.S., requires the state land planning agency to annually determine whether all local land development regulations and local comprehensive plans and the administration of such regulations are adequate to protect the Florida Keys ACSC. The Administration Commission, in rule 28-20.110, Florida Administrative Code, established a 10-year work plan that, in effect, is an amendment to the county comprehensive plan. Beginning in 2003, Monroe County and the state land planning agency must report to the Administration 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.

In its 2005 annual status report to the Administration Commission, the state land planning agency identified four remaining critical needs in the Keys Area: water quality improvement, habitat protection, affordable housing, and hurricane evacuation. In its required report, the state land planning agency 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.” On January 31, 2006, the Administration Commission found that substantial progress had been made through years seven and eight of the workplan.

Tourist Impact Tax – Section 125.0108, F.S., authorizes the levy of the Tourist Impact Tax. This tax is imposed on transient rental transactions at the rate of 1 percent. Counties may use revenues to purchase property in designated areas of critical state concern and to offset ad valorem taxes lost to the county due to those purchases. This tax may be levied by any county that has:

⁴ Section 380.0552(9), F.S.

- Created a land authority pursuant to s. 380.0663(1), F.S.;
- Authorized the levy by ordinance in designated areas of critical state concern; and
- Approved the proposed levy by referendum.

The county's governing body may, by passage of a resolution by four-fifths vote, repeal the tax. If not repealed sooner by the county, the tax shall be repealed 10 years after the date the ACSC designation is removed. There are currently four areas of critical state concern. These include the Florida Keys in Monroe County; the Big Cypress Swamp, primarily in Collier County; the Green Swamp in central Florida; and the Apalachicola Bay area in Franklin County. Only Monroe County is levying the tax.

Onsite Sewage and Disposal Systems – In 1999, the Legislature authorized the Florida Keys ACSC to enact an ordinance that:

- (1) Requires connection to a central sewerage system within 30 days of notice of availability of services; and
- (2) 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.

Creation of a Land Authority – 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 public body to be known as a land authority. The governing body of the land authority shall be the governing body of the county. The purpose of a land authority is to provide a mechanism to deal with the challenges of implementing comprehensive land use plans developed under the ACSC program which are often complicated by the environmental sensitivity of the area.⁵ To accomplish this, the land authority is to have a stable funding source and the flexibility to address plan implementation innovatively, including acting as an intermediary between individual landowners and the governmental entities regulating land use.⁶ Section 380.0666, F.S., enumerates the powers of a land authority.

III. Effect of Proposed Changes:

Section 1 amends s. 125.0108, F.S., to allow a county that has levied a tourist impact tax in an area designated as an ACSC for at least 20 consecutive years prior to the removal of such designation to continue to levy the tourist impact tax.

Section 2 amends s. 212.055, F.S., to allow a county that has levied a tourist impact tax in an area designated as an ACSC for at least 20 consecutive years prior to the removal of such designation to continue to use up to 10 percent of the surtax proceeds for a public purpose other than for infrastructure purposes after the removal of the designation.

⁵ Section 380.0661(1), F.S.

⁶ Section 380.0661(2), F.S.

Section 3 amends s. 380.0552, F.S., to provide a new process for the removal of the designation as an ACSC for the Florida Keys. The state land planning agency is required to submit a written report to the Administration Commission (Governor and Cabinet) detailing the progress of the Florida Keys towards accomplishing the tasks in the 10-year work program.⁷ The report shall also contain a recommendation as to whether substantial progress is being made towards completing those tasks. After receiving the report, the Administration Commission shall determine, before October 1, 2007, whether the Florida Keys have made substantial progress towards completing the required tasks.

The designation of the Florida Keys as an ACSC is removed on October 1, 2007, unless the Administration Commission finds that substantial progress has not been achieved toward accomplishing the tasks in the work program. If the designation of ACSC is not removed from the Florida Keys by October 1, 2007, the state land planning agency shall submit an annual report to the Administration Commission by November 1 of each year which describes the progress of the Florida Keys Area toward accomplishing the required tasks and a recommendation as to whether substantial progress has been achieved. The Administration Commission has 45 days after receiving the report to determine whether substantial progress has been achieved toward accomplishing the required tasks. The forum for judicial review of the Administration Commission's determination is established in the circuit court for Leon and Monroe counties. All proceedings shall be initiated within 30 days after the Administration Commission renders its determination and must be initiated in compliance with the Florida Rules of Civil Procedure. A review of the Administration Commission's determination is not subject to review under ch. 120, F.S.

At the point that the designation is removed, the Administration Commission must initiate rulemaking under ch. 120, F.S., within 60 days to repeal any rules relating to the designation of the Florida Keys as an ACSC. However, if the Administration Commission finds that the substantial progress has not been made toward accomplishing the tasks in the work plan, the commission shall provide written notice to Monroe County within 30 days of making such finding. This written report must detail those tasks in the work program that Monroe County must accomplish for substantial progress to be achieved in the next 12 months.

Section 4 amends s. 380.0666, F.S., to revise the scope of a land authority's powers with respect to the acquisition and disposition of real property to provide affordable housing. Specifically, a land authority is authorized to assist with providing affordable housing for families whose income does not exceed 160 percent of the median family income for the area. It expands the powers of a land authority to acquire real property in an area that was designated as an ACSC for at least 20 consecutive years prior to removal of the designation.

Section 5 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 ACSC for at least 20 consecutive years prior to removal of the designation to continue to exercise all powers granted to it under ch. 380, F.S., until terminated by the governing board.

⁷ See Chapter 28-20.110, F.S.

Section 6 amends section 4 of ch. 99-395, Laws of Florida, to allow an area that was designated as an ACSC for at least 20 consecutive years prior to removal of the designation to enact an ordinance that requires connection to a central sewerage system within 30 days of notice of availability of services.

Section 7 provides that, if the designation of the Florida Keys Area as an ACSC is removed, the state is liable in any inverse condemnation action relating to Monroe County land use regulations adopted under instructions or administrative rule of the Administration Commission.⁸ The state's liability is limited to the extent to which it was liable on the date that the Administration Commission determines substantial progress has been made towards completing the tasks of the work program. However, if an inverse condemnation action is initiated based on land use regulations that were not adopted under the instruction or administrative rule of the Administration Commission, the state's liability shall be determined by the courts and is limited to that which the state would have in an area that is not an ACSC. This section gives the state standing to appear in any inverse condemnation proceeding.

Section 8 provides the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

⁸ "Inverse condemnation" refers to "an action brought by a property owner seeking just compensation for land taken for a public use, against a government or private entity having the power of eminent domain." *See* Black's Law Dictionary (Sixth Edition).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Amendment 520616 by Community Affairs:

This amendment limits the extension of the levy of the tourist impact tax to 20 years after the removal of an area of critical state concern designation. In order for a county to continue to levy the tax after the 20-year period following removal of the designation, the county must adopt an ordinance authorizing the levy and the continued levy of the tax must be approved by referendum.

Amendment 371194 by Community Affairs:

This amendment provides that review of the Administration Commission's determination as to whether substantial progress has been made is to be reviewed under ch. 86, F.S. Venue for these proceedings is in Leon County circuit court. The fairly debatable standard applies.

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