

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1499 City of Key West, Monroe County

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee; Mooney and others

TIED BILLS: IDEN./SIM. BILLS:

FINAL HOUSE FLOOR ACTION: 117 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 1499 passed the House on March 2, 2022, and subsequently passed the Senate on March 10, 2022.

Florida law provides a process for certain environmentally or historically sensitive areas to be designated as "areas of critical state concern" (ACSC) by the Administration Commission (Commission). The land planning regulations of an ACSC must be consistent with certain principles for development. These principles are set by the Commission and applied to the local governments by the Department of Economic Opportunity.

Several areas have been designated as areas of critical state concern, including the Florida Keys, and more specifically the City of Key West. For this area, land planning regulations subject to approval by the state must be consistent with the principles of protecting many different natural resources and making affordable housing available. The regulations must be consistent with maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. This mandatory evacuation time limits opportunity for development within the Keys since further development could inhibit compliance with this timeframe. In turn, local governments within the Keys, bound by the 24-hour period, must restrict the number of building permits they can issue for new development.

In order to regulate and control new growth a building permit allocation system was adopted by the Commission and included in the comprehensive plan for the City of Key West. In addition to the limited permits available for distribution in the City of Key West, in 2018, the Commission approved an additional 300 workforce-affordable housing units available to the city separate from the requirements of the permit allocation system.

The bill creates an exception to the Key West building permit allocation system by authorizing 50 units of affordable housing to be constructed for employees of the Monroe County Sheriff's Office and other personnel. The construction must be consistent with the local comprehensive plan and the Sheriff's Office must have a hurricane evacuation plan that requires all occupants required to evacuate to be evacuated 48 hours in advance of tropical force winds.

This bill does not appear to have a fiscal impact.

The bill was approved by the Governor on June 24, 2022, ch. 2022-260, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission (Commission),¹ may designate by rule certain areas within the state containing resources of statewide significance as areas of critical state concern (ACSC) based on the recommendations of the state land planning agency.² To be designated as an ACSC, the area must:

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

Currently, Big Cypress Area,⁶ the Green Swamp Area,⁷ the Florida Keys Area, the City of Key West Area,⁸ and the Apalachicola Bay Area⁹ are designated as ACSC.

Once designated, the area's local comprehensive plan and land development regulations must come into compliance with the principles for guiding the development of the area set forth in the rule designating the ACSC. Within 180 days after an ACSC is established, the local government having jurisdiction may submit to DEO its existing land development regulations and local comprehensive plan for evaluation. If not already in compliance, the local government must prepare, adopt, and submit a new or modified comprehensive plan and regulations.¹⁰ Additionally, any local government having jurisdiction must give notice to DEO, unless such notice has been waived by DEO, of any application for a development permit in the ACSC and all developments approved must proceed in accordance with this chapter.¹¹

The 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 Village of Islamorada, the municipalities of Marathon, Layton, Key Colony Beach, and

¹ Ss. 14.202 and 380.031(1), F.S.

² Ss. 380.05(1)(a) and 380.031(18), F.S. (defines the "state land planning agency" as the Department of Economic Opportunity (DEO)).

³ S. 380.05(2)(a), F.S.

⁴ S. 380.05(2)(b), F.S.

⁵ S. 380.05(2)(c), F.S.

⁶ S. 380.055, F.S.

⁷ S. 380.0551, F.S.

⁸ S. 380.0552, F.S.

⁹ S. 380.0555, F.S.

¹⁰ S. 380.05(5) and (14), F.S.

¹¹ S. 380.05(16) and (19), F.S.

unincorporated Monroe County. In 1984, the designation was extended to the City of Key West.¹² The designation is intended to:

- Establish a land use management system protecting the natural environment of the Florida Keys, conserves and promotes the community character of the Florida Keys, promote orderly and balanced growth in accordance with the capacity of available and planned public facilities and services, and promote and support a diverse and sound economic base;¹³
- Provide affordable housing in close proximity to places of employment in the Florida Keys;¹⁴
- Protect the constitutional rights of property owners to own, use, and dispose of their real property;¹⁵
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys;¹⁶
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;¹⁷
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities, as applicable;¹⁸ and
- Ensure that the population of the Florida Keys can be safely evacuated.¹⁹

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

- Strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation;²⁰
- Protect shoreline and marine resources;²¹
- Protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, dune ridges and beaches, wildlife, and their habitat;²²
- Ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;²³
- Limit the adverse impacts of development on the quality of water throughout the Florida Keys;²⁴
- Enhance natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys;²⁵
- Protect the historical heritage of the Florida Keys;²⁶
- Protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments;²⁷
- Protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and

¹² S. 380.0552, F.S.; DEO, *Florida Keys Area of Critical State Concern Annual Report 2020*, https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2 (last visited Feb. 2, 2022).

¹³ S. 380.0552(2)(a)-(c) and (e), F.S.

¹⁴ S. 380.0552(2)(d), F.S.

¹⁵ S. 380.0552(2)(f), F.S.

¹⁶ S. 380.0552(2)(g), F.S.

¹⁷ S. 380.0552(2)(h), F.S.

¹⁸ S. 380.0552(2)(i), F.S.

¹⁹ S. 380.0552(2)(j), F.S.

²⁰ S. 380.0552(7)(a), F.S.

²¹ S. 380.0552(7)(b), F.S.

²² S. 380.0552(7)(c), F.S.

²³ S. 380.0552(7)(d), F.S.

²⁴ S. 380.0552(7)(e), F.S.

²⁵ S. 380.0552(7)(f), F.S.

²⁶ S. 380.0552(7)(g), F.S.

²⁷ S. 380.0552(7)(h), F.S.

disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems;²⁸

- Ensure the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems;²⁹
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys;³⁰
- Make available adequate affordable housing for all sectors of the population of the Florida Keys;³¹
- 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;³² and
- Protect the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.³³

Additionally, local comprehensive plans and land development regulations must be consistent with maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.³⁴

Hurricane Evacuation Clearance Time

Because access to and from the Keys is primarily by U.S. Highway 1, evacuation of the Keys' population in advance of a hurricane is essential for public safety. A system of managed growth was developed in order to ensure the ability to evacuate within the 24-hour evacuation clearance time.³⁵ A two-phase hurricane evacuation procedure was developed. In Phase One, tourists, recreational vehicles, campgrounds, parks, hospitals, and individuals with special needs are evacuated 48 hours prior to an anticipated landfall of a Category 3 or higher hurricane. In Phase Two, mobile home occupants are directed to evacuate 36 hours prior to anticipated landfall and permanent residents are directed to evacuate 24 hours prior to landfall.³⁶

As part of the overall evacuation strategy, the Commission adopted a building permit allocation system (BPAS) that caps the number of permits that can be issued for new residential structures. In order to determine the cap on permits, in 2011, the Commission directed DEO and the Division of Emergency Management to enter into a Memorandum of Understanding (MOU) with Monroe County, Village of Islamorada, and the cities of Marathon, Key West, Key Colony Beach, and Layton regarding hurricane evacuation modeling. The MOU is the basis for an analysis on the maximum build-out capacity of the Florida Keys while maintaining the ability of the permanent population to evacuate within 24 hours.³⁷ Based on the MOU that stipulates the input variables and assumptions, DEO determined that an additional 3,550 residential buildings could be constructed while still maintaining the 24-hour hurricane evacuation clearance time. In March 2013, the Commission approved the recommendation based on this finding to allocate 10 years' worth of growth to Monroe County through June 2023.³⁸ A portion of these residential building allocations were set-aside for affordable housing.³⁹ The City of Key West may award up to 91 units per year of new development permits through the BPAS.⁴⁰

²⁸ S. 380.0552(7)(i), F.S.

²⁹ S. 380.0552(7)(j), F.S.

³⁰ S. 380.0552(7)(k), F.S.

³¹ S. 380.0552(7)(l), F.S.

³² S. 380.0552(7)(m), F.S.

³³ S. 380.0552(7)(n), F.S.

³⁴ S. 380.0552(9)(a)1. and 2., F.S.

³⁵ S. 380.0552(9)(a)2., F.S.

³⁶ *Annual Report 2020*, *supra*, at 4. (no hurricane shelters are available in the Florida Keys for Category 3-5 hurricanes).

³⁷ DEO, *Hurricane Evacuation Clearance Time MOU*, <http://www.floridajobs.org/fdcp/dcp/ACSC/Files/Hurricane/MOU8-2-12FinalDraft.pdf>, (last visited February 2, 2022).

³⁸ DEO, *Florida Keys Area of Critical State Concern Annual Report 2013*, <http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2>, (last visited Feb. 2, 2022).

³⁹ *Annual Report 2020*, *supra*, at 4.

⁴⁰ *Annual Allocation Schedule*, <https://www.cityofkeywest-fl.gov/345/Annual-Allocation-Schedule>, (last visited Feb. 2, 2022).

Key West Building Permit Allocation System

In order to regulate and control new residential development growth, the City of Key West amended its comprehensive plan to include the BPAS through the Rate of Growth Ordinance.⁴¹ This system establishes minimum baseline standards for new residential dwelling units and assures sustainability, environmental responsibility, health, and safety. The BPAS helps ensure the City's infrastructure can accommodate the new residential growth while maintaining or improving the 24-hour hurricane evacuation time for permanent residents.⁴² The BPAS requires that a minimum of 50 percent of the total allocations between July 1, 2016, and July 1, 2023, be affordable.⁴³ In 2023, or when all the units approved in the 10-year plan have been allocated, whichever comes last, the City may no longer issue permits for new residential units.⁴⁴

The Keys Workforce Affordable Housing Initiative

On June 13, 2018, the Commission authorized the municipalities of Marathon, Islamorada, and Key West to amend their comprehensive plans to add 300 workforce-affordable housing units.⁴⁵ These units must be used for rental units and participants are required to commit to evacuating renters in Phase One of the hurricane evacuation procedure. Allocation of the Key West permits is not required to follow the BPAS ranking unless the number of applications received exceeds the authorized allocation.⁴⁶ These amendments have been challenged in each jurisdiction as being inconsistent with the 24-hour hurricane evacuation requirement.⁴⁷

Affordable Housing

Affordable housing is generally defined in relation to the annual area median household income adjusted for family size. "Affordable"⁴⁸ means the sum of monthly rents or monthly mortgage payments (including taxes and insurance) and utilities does not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for extremely-low-income households,⁴⁹ very-low-income households,⁵⁰ low-income households,⁵¹ or moderate-income households.⁵²

⁴¹ Key West Mun. Code (Fl.) Ss. 108-958-108-985.

⁴² *Building Permit Allocation System*, <https://www.cityofkeywest-fl.gov/336/Building-Permit-Allocation-System-BPAS>, (last visited Feb. 2, 2022).

⁴³ Key West Mun. Code (Fl.) ss. 1-1.16.1 and .2.

⁴⁴ Key West Mun. Code (Fl.) s. 108-1001.

⁴⁵ "DEO concluded that the Housing Initiative 'will not interfere with the 24-hour evacuation model and satisfies the statutory mandate to provide affordable housing.'" *Cecelia Mattino, Petitioner v. City of Marathon, Florida, Respondent Naja Girard, Petitioner*, 2020 WL 2069226, at *13.

⁴⁶ *Mattino*, 2020 WL 2069226, at *14.

⁴⁷ *Annual Report 2020, supra*, at 5.

⁴⁸ S. 420.0004(3), F.S.

⁴⁹ S. 420.0004(9), F.S. "Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

⁵⁰ S. 420.0004(17), F.S. "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 metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

⁵¹ S. 420.0004(11), F.S. "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 MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

⁵² S. 420.0004(12), F.S. "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 MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Effect of Proposed Changes

This bill allows an exception to the Key West BPAS to allow construction of 50 units of affordable housing⁵³ for employees of the Monroe County Sheriff’s Office and other essential services personnel⁵⁴ provided that the construction is otherwise consistent with the local comprehensive plan and the Sheriff’s Office has a hurricane evacuation plan that requires all occupants required to evacuate to be evacuated 48 hours in advance of tropical force winds.

The bill does not appear to alter the current annual allocation of 91 new development permits available to the City of Key West or the total 300 workforce-affordable housing units approved under the 2018 Housing Initiative.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. ECONOMIC IMPACT STATEMENT FILED? Yes No

D. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 9, 2021.

WHERE? The *Weekly Newspapers*, a newspaper published weekly in Marathon, in Monroe County, Florida.

E. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

⁵³ As defined in s. 420.0004, F.S.

⁵⁴ The term “essential services personnel” is defined as a natural person or families whose total annual household income is at or below 120 percent of the area median income, adjusted for household size, and at least one of whom is employed as police or fire personnel, a child care worker, a teacher or other education personnel, health care personnel, a public employee, or a service worker. S. 420.503(18), F.S.

