

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1293 Affordable Housing in Areas of Critical State Concern

**SPONSOR(S):** Mooney

**TIED BILLS:** IDEN./SIM. BILLS: SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Burgess	Darden
2) Agriculture, Conservation & Resiliency Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Governor and Cabinet, acting as the Administration Commission, are authorized to designate areas of critical state concern within the state that contain resources of statewide significance. The following areas in the state have been designated as critical state concern: the Big Cypress Area, the Green Swamp Area, the Florida Keys Area, the City of Key West Area, and the Apalachicola Bay Area.

The Florida Keys were designated as a critical state concern in 1975, including the municipalities of Key West, Islamorada, Marathon, Layton, and Key Colony Beach, as well as unincorporated Monroe County. State, regional, and local governments in the Florida Keys Area of Critical State Concern are required to coordinate development plans and carry out programs and activities in accordance with development principles.

A local government in the Florida Keys Area may enact, amend, or revoke a land development regulation or element of a local comprehensive plan, but the enactment, amendment, or rescission becomes effective only after approval by the state land planning agency, the Department of Economic Opportunity (DEO).

Local governments are authorized to approve the development of housing that is affordable on any parcel zoned for residential, commercial, or industrial use, regardless of any state or local law or regulation that would otherwise preclude such development. If the project is on a parcel zoned for commercial or industrial use, at least 10 percent of the units must be affordable and the developer must agree to not seek funding from the State Apartment Incentive Loan Program.

The bill provides that counties and municipalities in areas of critical state concern are excluded from a provision that allow county or municipality from approving the development of affordable housing on any parcel zoned for residential, commercial, or industrial use. The bill exempts counties or eligible municipalities whose land has been designated as an area of critical state concern within the last five years for which the Legislature had declared its intent to provide affordable housing from a requirement to use specified portions of the local housing assistance trust fund to providing assistance to very-low-income and low-income persons.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,<sup>1</sup> are authorized to designate certain areas within the state that contain resources of statewide significance as areas of critical state concern.<sup>2</sup> An area of critical state concern may be designated for an area:

- Containing, or having 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;<sup>3</sup>
- Containing, or having 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;<sup>4</sup> or
- Having a significant impact upon, or 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.<sup>5</sup>

The designated areas of critical state concern in the state are: the Big Cypress Area,<sup>6</sup> the Green Swamp Area,<sup>7</sup> the Florida Keys Area, the City of Key West Area,<sup>8</sup> and the Apalachicola Bay Area.<sup>9</sup>

##### Florida Keys Area of Critical State Concern

In 1975, the Florida Keys were designated as an area of critical state concern. The designation includes the municipalities of Key West,<sup>10</sup> Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.<sup>11</sup> The designation is intended to:

- Establish a land use management system that protects the natural environment of the Florida Keys; conserves and promotes the community character of the Florida Keys; promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services; and promotes and supports a diverse and sound economic base;<sup>12</sup>
- Provide affordable housing in close proximity to places of employment in the Florida Keys;<sup>13</sup>

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<sup>1</sup> See ss. 380.031(1) and 14.202, F.S.

<sup>2</sup> S. 380.05, F.S.

<sup>3</sup> S. 380.05(2)(a), F.S.

<sup>4</sup> S. 380.05(2)(b), F.S.

<sup>5</sup> S. 380.05(2)(c), F.S.

<sup>6</sup> S. 380.055, F.S.

<sup>7</sup> S. 380.0551, F.S.

<sup>8</sup> S. 380.0552, F.S.

<sup>9</sup> S. 380.0555, F.S.

<sup>10</sup> The City of Key West challenged the designation as a critical area and after litigation in 1984 was given its own area of critical state concern designation. See *2020 Florida Keys Area of Critical State Concern Annual Report* available at [https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0\\_2](https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2) (last visited Mar. 16, 2023).

<sup>11</sup> S. 380.0552, F.S.; *2020 Florida Keys Area of Critical State Concern Annual Report* available at [https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0\\_2](https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2) (last visited Mar. 16, 2023).

<sup>12</sup> S. 380.0552(2)(a)-(c) and (e), F.S.

<sup>13</sup> S. 380.0552(2)(d), F.S.

- Protect the constitutional rights of property owners to own, use, and dispose of their real property;<sup>14</sup>
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys;<sup>15</sup>
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;<sup>16</sup>
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities, as applicable;<sup>17</sup> and
- Ensure that the population of the Florida Keys can be safely evacuated.<sup>18</sup>

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

- 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;<sup>19</sup>
- Protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat;<sup>20</sup>
- Protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (e.g., hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat;<sup>21</sup>
- Ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;<sup>22</sup>
- Limit the adverse impacts of development on the quality of water throughout the Florida Keys;<sup>23</sup>
- 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;<sup>24</sup>
- Protect the historical heritage of the Florida Keys;<sup>25</sup>
- 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, treatment, and disposal facilities;
  - Solid waste treatment, 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;<sup>26</sup>
- Protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems;<sup>27</sup>

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<sup>14</sup> S. 380.0552(2)(f), F.S.

<sup>15</sup> S. 380.0552(2)(g), F.S.

<sup>16</sup> S. 380.0552(2)(h), F.S.

<sup>17</sup> S. 380.0552(2)(i), F.S.

<sup>18</sup> S. 380.0552(2)(j), F.S.

<sup>19</sup> S. 380.0552(7)(a), F.S.

<sup>20</sup> S. 380.0552(7)(b), F.S.

<sup>21</sup> S. 380.0552(7)(c), F.S.

<sup>22</sup> S. 380.0552(7)(d), F.S.

<sup>23</sup> S. 380.0552(7)(e), F.S.

<sup>24</sup> S. 380.0552(7)(f), F.S.

<sup>25</sup> S. 380.0552(7)(g), F.S.

<sup>26</sup> S. 380.0552(7)(h), F.S.

<sup>27</sup> S. 380.0552(7)(i), F.S.

- 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;<sup>28</sup>
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys;<sup>29</sup>
- Make available adequate affordable housing for all sectors of the population of the Florida Keys;<sup>30</sup>
- 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;<sup>31</sup> 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.<sup>32</sup>

A land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the Department of Economic Opportunity (DEO).<sup>33</sup> Amendments to local comprehensive plans must also be reviewed for compliance with the following:

- Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed criteria for wastewater treatment and disposal facilities or onsite sewage treatment and disposal systems; and
- Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by DEO.<sup>34</sup>

In 2011, the Administration 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.<sup>35</sup> 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.<sup>36</sup>

### Affordable Housing

Affordable housing is defined in terms of household income. Resident eligibility for Florida's state and federally-funded housing programs is governed by area median income (AMI) or statewide median family income,<sup>37</sup> published annually by the United States Department of Housing and Urban Development (HUD).<sup>38</sup> The following are standard household income level definitions and their relationship to the 2022 Florida statewide AMI of \$78,300 for a family of four (as family size changes, the income range also varies):<sup>39</sup>

<sup>28</sup> S. 380.0552(7)(j), F.S.

<sup>29</sup> S. 380.0552(7)(k), F.S.

<sup>30</sup> S. 380.0552(7)(l), F.S.

<sup>31</sup> S. 380.0552(7)(m), F.S.

<sup>32</sup> S. 380.0552(7)(n), F.S.

<sup>33</sup> S. 380.552(9)(a), F.S.

<sup>34</sup> S. 380.0552(9)(a)1. and 2., F.S.

<sup>35</sup> DEO Florida Keys Hurricane Evacuation available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys/florida-keys-hurricane-evacuation>.

<sup>36</sup> *Id.*

<sup>37</sup> The 2022 Florida SMI for a family of four was \$79,300. U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Mar. 16, 2023).

<sup>38</sup> HUD User, Office of Policy Development and Research, "Income Limits," available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Mar. 16, 2023) (SMI and AMI available under the "Access Individual Income Limits Area" dataset).

<sup>39</sup> U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Mar. 16, 2023).

- Extremely low income – earning up to 30 percent AMI (at or below \$ 23,500);<sup>40</sup>
- Very low income – earning from 30.01 to 50 percent AMI (\$23,501 to \$39,150);<sup>41</sup>
- Low income – earning from 50.01 to 80 percent AMI (\$39,151 to \$62,650);<sup>42</sup> and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$62,651 to \$94,000).<sup>43</sup>

### State Apartment Incentive Loan Program

The State Apartment Incentive Loan (SAIL) Program<sup>44</sup> provides low-interest loans on a competitive basis to affordable housing developers. SAIL is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the State Housing Trust Fund. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very-low-income individuals and families. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

The Florida Housing Finance Corporation administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.<sup>45</sup>

### Local Government Affordable Housing Policies

Counties and municipalities may adopt an inclusionary housing ordinance that require a developer to provide a specified number or percentage of affordable housing units within a development or, in lieu of, allow a developer to contribute to a housing fund or other alternative.<sup>46</sup> In exchange, however, a county or municipality must provide incentives to fully offset all costs to the developer for its affordable housing contribution.<sup>47</sup> Incentives may include:

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designations; or
- Reducing or waiving fees, such as impact fees or water and sewer charges.

Counties and municipalities may approve the development of housing that is affordable on any parcel zoned for residential, commercial, or industrial use, regardless of any state or local law or regulation that would otherwise preclude such development.<sup>48</sup> If the project is on a parcel zoned for commercial or industrial use, at least 10 percent of the units must be affordable and the developer must agree to not seek funding from the SAIL Program.

### SHIP Program

The SHIP program was created in 1992<sup>49</sup> to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The SHIP program provides funds to all 67 counties and 52 Community Development Block Grant<sup>50</sup> entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.<sup>51</sup> The program was designed to serve very-low, low-, and moderate-

<sup>40</sup> S. 420.0004(9), F.S.

<sup>41</sup> S. 420.0004(17), F.S.

<sup>42</sup> S. 420.0004(11), F.S.

<sup>43</sup> S. 420.0004(12), F.S.

<sup>44</sup> See s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, <http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited Mar. 16, 2023).

<sup>45</sup> S. 420.5087(6)(c), F.S.

<sup>46</sup> Ss. 125.01055(2) and 166.04151(2), F.S.

<sup>47</sup> Ss. 125.01055(2) and 166.04151(2), F.S.

<sup>48</sup> Ss. 125.01055(6) and 166.04151(6), F.S.

<sup>49</sup> Ch. 92-317, Laws of Fla.

<sup>50</sup> The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

<sup>51</sup> See ss. 420.907-420.9089, F.S.

income families and is administered by FHFC. SHIP program funds may be used to pay for emergency repairs, rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, mortgage buydowns, acquisition of property for affordable housing, matching dollars for federal housing grants and programs, and homeownership counseling.<sup>52</sup>

Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.<sup>53</sup> Local governments submit their LHAPs to FHFC for review to ensure they meet the broad statutory guidelines and the requirements of the program rules. FHFC must approve an LHAP before a local government may receive SHIP program funding.

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

- At least 75 percent of SHIP program funds must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;<sup>54</sup> and
- Up to 25 percent of SHIP program funds may be reserved for allowed rental services.<sup>55</sup>

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

- At least 65 percent of SHIP program funds must be reserved for home ownership for eligible persons;<sup>56</sup>
- At least 20 percent of SHIP program funds must serve persons with special needs;<sup>57</sup>
- Up to 20 percent of SHIP program funds may be used for manufactured housing;<sup>58</sup> and
- At least 30 percent of SHIP program funds must be used for awards to very-low-income persons or eligible sponsors serving very-low-income persons, and another 30 percent must be used for awards for low-income-persons or eligible sponsors serving low-income persons.<sup>59</sup>

### Effect of Proposed Changes

The bill removes a provision that states the ability of a county or municipality to adopt an inclusionary housing ordinance does not apply in an area of critical state concern and replaces it with exclusion from a provision that allows county or municipality from approving the development of affordable housing on any parcel zoned for residential, commercial, or industrial use.

The bill also provides that if a county or municipality in an area designated within the previous 5 years as an area of critical state concern by the Legislature for which the Legislature has declared its intent to provide affordable housing, that county or municipality is exempt from the requirement to spend at least 30 percent of SHIP program funds on awards for very-low-income persons and another 30 percent on awards for low-income persons.

### B. SECTION DIRECTORY:

Section 1: Amends s. 125.01055, F.S., relating to county affordable housing.

Section 2: Amends s. 166.04151, F.S., relating to municipal affordable housing.

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<sup>52</sup> S. 420.072(7), F.S.

<sup>53</sup> Sections 420.9075 and 420.9075(3), F.S., outline a list of strategies LHAPs are encouraged to employ, such as helping those affected by mobile home park closures, encouraging innovative housing design to reduce long-term housing costs, preserving assisted housing, and reducing homelessness.

<sup>54</sup> S. 420.9075(5)(c), F.S.

<sup>55</sup> S. 420.9075(5)(b), F.S. However, a local government may not expend money distributed to it to provide ongoing rent subsidies, except for: security and utility deposit assistance; eviction prevention not to exceed six months' rent; or a rent subsidy program for very-low-income households with at least one adult who is a person with special needs or is homeless, not to exceed 12 months' rental assistance.

<sup>56</sup> S. 420.9075(5)(a), F.S. "Eligible person" or "eligible household" means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income based upon the annual gross income of the household.

<sup>57</sup> S. 420.9075(5)(d), F.S.

<sup>58</sup> S. 420.9075(5)(e), F.S.

<sup>59</sup> S. 420.9075(5)(g)2., F.S.

Section 3: Amends s. 420.9075, F.S., relating to local housing assistance plans.

Section 4: Provides an effective date of July 1, 2023.

## 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. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.