

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1297 Affordable Housing in Counties Designated as Areas of Critical State Concern

**SPONSOR(S):** Ways & Means Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, Mooney

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N, As CS	Burgess	Darden
2) Ways & Means Committee	21 Y, 0 N, As CS	Berg	Aldridge
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Governor and Cabinet, acting as the Administration Commission, are authorized to designate certain areas within the state that contain resources of statewide significance as areas 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, Islamorada, Marathon, Layton and Key Colony Beach, and 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.

The bill:

- Provides that the authorization for a local government to approve the development that would otherwise be precluded by state or local law or regulation does not apply in the Florida Keys Area of Critical State Concern;
- Expands the local option affordable housing exemption in s. 196.1979, F.S., to include a full exemption for a single-family residential unit or a residential duplex if the property is used to provide affordable housing in Monroe County and certain other conditions are met.
- Revises eligibility for the local option affordable housing ad valorem tax exemption to allow Monroe County to exempt properties even if they are not within a multifamily project containing 50 or more units, at least 20 percent of which provide affordable housing;
- Revises hurricane evacuation clearance time modeling criteria;
- Authorizes land authorities to require compliance with income limitations on land conveyed for affordable housing by memorializing the original land authority funding or donation in a recordable perpetual deed restriction;
- For five years, exempts Monroe County from a requirement to only provide assistance to very-low-income and low-income persons with funding from the local housing assistance trust fund; and
- Provides for a one-time use in Monroe County of its accumulated surplus from tourist development and tourist impact taxes collected through September 30, 2024, to provide affordable housing for employees of tourism-related businesses.

The Revenue Estimating Conference has not estimated the impact of the bill, but staff estimates that the recurring negative local revenue impact to Monroe County from the provision allowing new and expanded local exemptions could be significant. These impacts apply at the option of the local government, however, so staff estimates that the revenue impact to local governments will be recurring negative indeterminate. The bill does not impact state revenues.

The bill has an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Areas of Critical State Concern

The Governor and Cabinet, acting 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 Area was designated as an area of critical state concern, including unincorporated Monroe County and its municipalities, including Islamorada, Marathon, Layton and Key Colony Beach.<sup>10</sup> In 1984, the City of Key West was also designated an Area of Critical State Concern.<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;
- Provide affordable housing in close proximity to places of employment in the Florida Keys;
- Protect the constitutional rights of property owners to own, use, and dispose of their real property;

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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> 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 February 5, 2024).

<sup>11</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 February 5, 2024).

- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys;
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities, as applicable; and
- Ensure that the population of the Florida Keys can be safely evacuated.<sup>12</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;
- Protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat;
- 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;
- Ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;
- Limit the adverse impacts of development on the quality of water throughout the Florida Keys;
- 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;
- Protect the historical heritage of the Florida Keys;
- 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;
- 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;
- 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;
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys;
- Make available adequate affordable housing for all sectors of the population of the Florida Keys;
- 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; 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>13</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

<sup>12</sup> S. 380.0552(2)(a)-(j), F.S.

<sup>13</sup> S. 380.0552(7), F.S.

rescission becomes effective only upon approval by the Department of Commerce (Commerce).<sup>14</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 Commerce.<sup>15</sup>

In 2011, the Administration Commission directed Commerce and the Division of Emergency Management to enter into a Memorandum of Understanding (MOU) with Monroe County, the Village of Islamorada, and the cities of Marathon, Key West, Key Colony Beach, and Layton regarding hurricane evacuation modeling.<sup>16</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>17</sup>

### Land Authorities

Current law authorizes each county in which one or more designated areas of critical state concern are located to create a land authority by ordinance.<sup>18</sup> The Legislature authorized the creation of land authorities to equitably address the challenges of implementing comprehensive land use plans developed pursuant to the area of critical state concern program, which can be complicated by the environmental sensitivity of such areas.<sup>19</sup> Monroe County is the only county in the state that has established a land authority pursuant to this statutory authority.<sup>20</sup>

Land authorities are intended to provide stable funding, be flexible enough to address plan implementation innovatively, and to act as intermediaries between individual landowners and the governmental entities regulating land use.<sup>21</sup> The governing body of the land authority is the governing board of the county.<sup>22</sup>

Land authorities' powers are statutorily enumerated and include, among other powers, the powers to sue and be sued; to make and execute contracts and other instruments; to commission studies and analyses of county land planning needs within areas of critical state concern; to acquire and dispose of real and personal property under specified conditions; to contribute tourist impact tax revenues to certain authorized government and state agency recipients for specified purposes under certain conditions; to borrow money through the issuance of bonds and to buy, hold, cancel, or resell such bonds; and to do any and all things otherwise necessary or convenient to carry out the purposes of the land authority.<sup>23</sup>

### Monroe County Land Authority

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<sup>14</sup> S. 380.552(9)(a), F.S.

<sup>15</sup> S. 380.0552(9)(a)1. and 2., F.S.

<sup>16</sup> Dept. of Commerce, *Florida Keys Hurricane Evacuation Modeling Report*, 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> (last visited February 5, 2024).

<sup>17</sup> *Id.*

<sup>18</sup> S. 380.0663(1), F.S.

<sup>19</sup> S. 380.0661(1), F.S.

<sup>20</sup> See *Monroe County, Monroe County Land Authority*, <https://www.monroecounty-fl.gov/272/Land-Authority> (last visited February 5, 2024).

<sup>21</sup> S. 380.0661(2), F.S.

<sup>22</sup> S. 380.0663(1), F.S.

<sup>23</sup> S. 380.0666, F.S.

The Monroe County Comprehensive Plan Land Authority, known as the Monroe County Land Authority (Authority), has a core mission of acquiring property for conservation use.<sup>24</sup> The Authority also provides funding for affordable housing projects, prevention or satisfaction of private property acquisition, and maintains the conservation land stewardship program in Monroe County within the Florida Keys and Key West Areas of Critical State Concern.<sup>25</sup>

The Authority was established to assist in the implementation of land use plans and to serve as an intermediary between landowners and government agencies that regulate land use. The Authority is a component of Monroe County government created in 1986 and governed by the Monroe County Board of County Commissioners.<sup>26</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>27</sup> published annually by the United States Department of Housing and Urban Development (HUD).<sup>28</sup> The following are standard household income level definitions and their relationship to the 2023 Florida statewide AMI of \$85,500 for a family of four (as family size changes, the income range also varies):<sup>29</sup>

- Extremely low income – earning up to 30 percent AMI (at or below \$ 24,850);<sup>30</sup>
- Very low income – earning from 30.01 to 50 percent AMI (\$24,851 to \$41,450);<sup>31</sup>
- Low income – earning from 50.01 to 80 percent AMI (\$41,451 to \$66,350);<sup>32</sup> and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$66,351 to \$102,600).<sup>33</sup>

### *Zoning and Land Use Preemption for Affordable Developments*

The Growth Management Act requires every county and municipality to create and implement a comprehensive plan to guide future development.<sup>34</sup> All development, both public and private, and all development orders<sup>35</sup> approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.<sup>36</sup> The future land use element in a comprehensive plan establishes a range of allowable uses and densities and intensities over large areas, and the specific use and intensities for specific parcels<sup>37</sup> within that range are decided by a more detailed, implementing zoning map.<sup>38</sup>

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<sup>24</sup> Monroe County, *Monroe County Land Authority*, <https://www.monroecounty-fl.gov/272/Land-Authority> (last visited February 5, 2024).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> The 2023 Florida SMI for a family of four was \$ 85,500. 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#2023> (last visited February 5, 2024).

<sup>28</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#2023> (last visited February 5, 2024). (SMI and AMI available under the "Access Individual Income Limits Area" dataset).

<sup>29</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#2023> (last visited February 5, 2024).

<sup>30</sup> S. 420.0004(9), F.S.

<sup>31</sup> S. 420.0004(17), F.S.

<sup>32</sup> S. 420.0004(11), F.S.

<sup>33</sup> S. 420.0004(12), F.S.

<sup>34</sup> S. 163.3167(2), F.S.

<sup>35</sup> "Development order" means any order granting, denying, or granting with conditions an application for a development permit. See s. 163.3164(15), F.S. "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. See s. 163.3164(16), F.S.

<sup>36</sup> S. 163.3194(3), F.S.

<sup>37</sup> When local governments make changes to their zoning regulations or comprehensive plans some structures may no longer be in compliance with the newly approved zoning and may be deemed a "nonconforming use." A nonconforming use or structure is one in which the use or structure was legally permitted prior to a change in the law, and the change in law would no longer permit the re-establishment of such structure or use. Mark A. Rothenberg, *The Status of Nonconforming Use Law in Florida*, Florida B.J. Vol 79, no. 3 (2005), <https://www.floridabar.org/the-florida-bar-journal/the-status-of-nonconforming-use-law-in-florida> (last visited February 5, 2024).

<sup>38</sup> Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) *citing* Brevard Cty. v. Snyder, 627 So. 2d 469, 475 (Fla. 1993).

Counties and municipalities may, notwithstanding any other law or local ordinance or regulation to the contrary, may approve the development of affordable housing, including mixed-use residential development, on any parcel zoned for commercial or industrial use where state or local law or regulation would otherwise preclude such development.<sup>39</sup> At least 10 percent of the units in a project on a commercial or industrial parcel must be affordable.<sup>40</sup>

This provision allowed local governments to expedite the development of affordable housing by allowing locals to bypass state law and their comprehensive plans and zoning regulations that would otherwise preclude or delay such development.

### Local Option Affordable Housing Exemption

The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the taxable value of real and tangible personal property as of January 1 of each year.<sup>41</sup> The Florida Constitution allows the Legislature to exempt from ad valorem taxation portions of property that are used predominantly for educational, literary, scientific, religious or charitable purposes.<sup>42</sup> The Legislature has implemented these exemptions and set forth criteria to determine whether property is entitled to an exemption.<sup>43</sup>

The Live Local Act authorized the counties and municipalities to enact an ad valorem tax exemption for certain property used for providing affordable housing.<sup>44</sup>

Portions of property eligible for the exemption must be utilized to house persons or families whose household income does not exceed 30 percent of AMI for that area or whose household income is between 30 to 60 percent of AMI for that area, be contained in a multifamily project of at least 50 units where at least 20 percent are reserved for affordable housing, and have rent set such that it provides affordable housing to people in the target income bracket, or no higher than 90 percent of the fair market rent value as determined by a rental market study, whichever is less.<sup>45</sup> Additionally, the property must not have been cited for code violations on three or more occasions in the preceding 24 months and must not have outstanding code violations or related fines.<sup>46</sup>

In adopting this exemption, a local government may choose to exempt properties for those with household incomes that do not exceed 30 percent of AMI for that area, those whose household income is between 30 and 60 percent of AMI, or both, so long as the other conditions are met. The value of the exemption is up to 75 percent of the assessed value of each unit if less than 100 percent of the multifamily project's units are used to provide affordable housing, or up to 100 percent of the assessed value if all of the project's units are used to provide affordable housing.<sup>47</sup>

An ordinance enacting such an exemption must:

- Be adopted under normal non-emergency procedures;
- Designate the local entity under the supervision of the governing body which must develop, receive, and review applications for certification and develop notices of determination of eligibility;
- Require the property owner to apply for certification on a form including the most recent market study, which must have been conducted by an independent certified general appraiser in the

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<sup>39</sup> Ss. 125.01055(6) and 166.04151(6), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> S. 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. S. 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in Art. VII, s. 1(b), Fla. Const., and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>42</sup> Art. VII, s. 3(a), Fla. Const.

<sup>43</sup> S. 196.196, F.S.

<sup>44</sup> Ch. 2023-17, s. 9, Laws of Fla., codified as s. 196.1979, F.S.

<sup>45</sup> S. 196.1979(1)(a)1.-3., F.S.

<sup>46</sup> S. 196.1979(1)(a)4., F.S.

<sup>47</sup> S. 196.1979(1)(b), F.S.

preceding three years; a list of units for which the exemption is sought; and the rent amount received for each unit;

- Require the designated entity to verify and certify the property as having met the requirements for the exemption, and to notify unsuccessful applicants with the reasons for denial;
- Set out the requirements for each unit discussed above;
- Require the property owner to submit an application for exemption accompanied by certification to the property appraiser by March 1;
- Specify that such exemption only applies to taxes levied by the unit of government granting the exemption;
- Specify that the property may not receive such an exemption after the expiration of the ordinance granting the exemption;
- Identify the percentage of assessed value to be exempted, and which allowable income limitation applies to the exemption; and
- Require that the deadline to submit an application and a list of certified properties be published on the government's website.<sup>48</sup>

The ordinance must expire before the fourth January 1 after adoption; however, the governing body may adopt a new ordinance renewing the exemption.<sup>49</sup>

If the property appraiser determines that such an exemption has been improperly granted within the last 10 years, the property appraiser must serve the owner with a notice of intent to record a tax lien. Such property will be subject to the taxes improperly exempted, plus a penalty of 50 percent and 15 percent annual interest. Penalty and interest amounts do not apply to exemptions erroneously granted due to clerical mistake or omission by the property appraiser.<sup>50</sup>

### Keys Workforce Housing Initiative

The Florida Keys Area Protection Act<sup>51</sup> provides, in part, that comprehensive plan amendments within the covered area, which includes the majority of Monroe County, must comply with “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.”<sup>52</sup> Monroe County, applicable municipalities, and DEO have agreed to use a multi-phase evacuation model and limit residential building permits going forward in order to comply with these standards.<sup>53</sup>

In response to need for affordable housing, DEO developed, and the Administration Commission approved in 2018, the Keys Workforce Housing Initiative (“Initiative”), which provided for up to 1,300 building permit allocations for deed-restricted affordable housing properties agreeing to evacuate at least 48 hours in advance of a hurricane making landfall.<sup>54</sup>

In 2023, the Live Local Act passed an uncodified provision that states the Initiative is an exception to the evacuation time constraints of the Florida Keys Protection Act.<sup>55</sup> Instead, deed-restricted affordable workforce housing properties receiving permit allocations under the Initiative must agree to evacuate at least 48 hours in advance of hurricane landfall. The bill provides that the comprehensive plan amendment approved by Commerce to implement the Initiative is valid and authorizes the respective local government to adopt ordinances or regulations to implement the plan amendment.

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<sup>48</sup> S. 196.1979(3), F.S.

<sup>49</sup> S. 196.1979(5), F.S.

<sup>50</sup> S. 196.1979(6), F.S.

<sup>51</sup> S. 380.0552, F.S.

<sup>52</sup> S. 380.0052(9)(a)2.

<sup>53</sup> See *Mattino v. City of Marathon*, 345 So.3d 939 (Fla. 3d DCA 2022).

<sup>54</sup> These residents would be part of the first evacuation phase, which under most circumstances evacuates in the 48 to 24-hour window before a hurricane. Florida Administration Commission, Exhibit b, Supporting Documentation for Agenda Item 2., Presentation of the Department of Economic Opportunity's Keys Workforce Housing Initiative, available at <https://www.myflorida.com/myflorida/cabinet/agenda18/0515/ADCOM051518.pdf> (last visited February 5, 2024).

<sup>55</sup> Ch. 2023-17, s. 42, Laws of Fla.

## State Housing Initiatives Program (SHIP)

The SHIP program was created in 1992<sup>56</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>57</sup> entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.<sup>58</sup> The program was designed to serve very-low, low-, and moderate-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>59</sup>

Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.<sup>60</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>61</sup> and
- Up to 25 percent of SHIP program funds may be reserved for allowed rental services.<sup>62</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>63</sup>
- At least 20 percent of SHIP program funds must serve persons with special needs;<sup>64</sup>
- Up to 20 percent of SHIP program funds may be used for manufactured housing;<sup>65</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>66</sup>

## Tourist Development Taxes

The Local Option Tourist Development Act<sup>67</sup> authorizes counties to levy five separate taxes on transient rental<sup>68</sup> transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum potential tax rate varies:

- The original TDT may be levied at the rate of 1 or 2 percent.

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<sup>56</sup> Ch. 92-317, Laws of Fla.

<sup>57</sup> The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

<sup>58</sup> See ss. 420.907-420.9089, F.S.

<sup>59</sup> S. 420.072(7), F.S.

<sup>60</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>61</sup> S. 420.9075(5)(c), F.S.

<sup>62</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>63</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>64</sup> S. 420.9075(5)(d), F.S.

<sup>65</sup> S. 420.9075(5)(e), F.S.

<sup>66</sup> S. 420.9075(5)(g)2., F.S.

<sup>67</sup> S. 125.0104, F.S.

<sup>68</sup> S. 125.0104(3)(a)(1), F.S. considers "transient rental" to be the rental or lease of any accommodation for a term of six months or less.



- An additional 1 percent tax may be levied by counties who have previously levied the original TDT at the 1 or 2 percent rate for at least three years.
- A high tourism impact tax may be levied at an additional 1 percent.
- A professional sports franchise facility tax may be levied up to an additional 1 percent.
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.<sup>69</sup>

### *Tourist Development Tax Uses*

Current law authorizes counties to levy and spend TDTs as a mechanism for funding a variety of tourist-related uses, including tourism promotion, financing and constructing of public facilities needed to increase tourist-related business activities in the county, beach restoration and maintenance projects, convention centers, and professional sports franchise facilities.<sup>70</sup> Such uses are tied to the specific TDT being levied.

For example, the revenue derived from the original 1 or 2% TDT and from the additional 1% TDT levied by counties who have previously levied the original TDT may be used to:

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote a:
  - Publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium;
  - Auditoriums that are publicly owned but operated by a 501(c)(3) organization; or
  - Aquarium or museum that is publicly owned and operated or owned and operated by a not-for-profit organization.<sup>71</sup>
- Promote zoos that are publicly owned and operated or owned and operated by not-for-profit organizations;<sup>72</sup>
- Promote or advertise tourism in the state;<sup>73</sup>
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county;<sup>74</sup>
- Finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river;<sup>75</sup> or
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities needed to increase tourist-related business activities in the area, including any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the facilities into service.<sup>76</sup>
- In counties with populations less than 950,000, the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.<sup>77</sup>

<sup>69</sup> S. 125.0104(3)(c)-(d), (l), and (m)-(n), F.S.

<sup>70</sup> S. 125.0104, F.S.

<sup>71</sup> S. 125.0104(5)(a)1., F.S.

<sup>72</sup> S. 125.0104(5)(a)2., F.S.

<sup>73</sup> S. 125.0104(5)(a)3., F.S.

<sup>74</sup> S. 125.0104(5)(a)4., F.S.

<sup>75</sup> In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. See s. 125.0104(5)(a)5., F.S.

<sup>76</sup> S. 125.0104(5)(a)6., F.S. This provision is limited to counties in which \$10 million in tourist development tax revenues were received in the prior year, the county governing board approves such use by a 2/3 vote, no more than 70% of the proposed public facilities will be funded with TDT revenue, at least 40% of all TDT revenue collected in the county are spent to promote and advertise tourism, and an independent analysis demonstrates the positive impact the infrastructure project will have on tourist-related businesses.

<sup>77</sup> S. 125.0104(5)(b), F.S.

- In certain coastal counties, up to 10% of the revenues can be used to reimburse the county for public safety services necessary to address impact related to increased tourism.<sup>78</sup>
- Secure revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum, or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.<sup>79</sup>

### Tourist Impact Tax

In addition to tourist development tax, any county that has created a land authority may levy a tourist impact tax of 1 percent on all transient rental facilities within the county located in areas designated as an area of critical state concern.<sup>80</sup> If more than 50 percent of the land area of the county is located in an area of critical state concern, the tax may be levied countywide. The proceeds of the tax are used to purchase property in the area of critical state concern and to offset the loss of ad valorem taxes due to those land acquisitions.<sup>81</sup> Currently, Monroe County is the only county eligible to levy this tax.<sup>82</sup>

### **Effect of Proposed Changes**

The bill provides the authorization for a local government to approve a development that would otherwise be precluded by state or local law or regulation does not apply to local governments located in the Florida Keys Area of Critical State Concern.

The bill expands the local option affordable housing ad valorem tax exemption by allowing a county or municipality located in the Florida Keys Area of Critical State Concern or the Key West Area of Critical State Concern to provide an ad valorem property tax exemption up to 100 percent of the assessed value for single-family residential units or residential duplexes used to provide affordable housing.

The bill also provides that a county or municipality located in the Florida Keys Area of Critical State Concern or the Key West Area of Critical State Concern may provide an affordable housing tax exemption under the existing provisions of s. 196.1978 even if the property does not have more than 50 units, at least 20% of which are used for affordable housing. This provision would apply starting with the 2025 tax roll.

As it pertains to hurricane evacuation clearance time modeling, the bill provides that mobile home residents are not considered permanent residents for purposes of the 24 hour evacuation requirement in s. 380.0552(9)(a)2., F.S., and clarifies that the Key West Area of Critical State Concern will be included in the hurricane evaluation study.

The bill authorizes land authorities to require compliance with income limitations on land conveyed for affordable housing by memorializing the original land authority funding or donation in a recordable perpetual deed restriction. The bill provides that if a purchase receives state or federal funding that requires a priority lien position over the land authority deed restriction, the land authority funding or contribution may be subordinate to a first purchase money mortgage and the state or federal funding lien.

The bill provides that a county or municipality that that includes or has included within the previous five years an area of critical state concern designated by the Legislature for which the Legislature has declared its intent to provide affordable housing is exempt from the following requirements for awards made under the SHIP program:

<sup>78</sup> S. 125.0104(5)(c), F.S. The counties must have more than \$10 million in TDT revenue, have three or more municipalities, and have a population of less than 225,000.

<sup>79</sup> S. 125.0104(5)(d), F.S.

<sup>80</sup> S. 125.0108, F.S.

<sup>81</sup> S. 125.0108(3), F.S.

<sup>82</sup> Office of Economic and Demographic Research, *2023 Florida Tax Handbook*, 306 <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf> (last visited February 5, 2024).

- At least 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to very-low-income persons or eligible sponsors who will serve very-low-income persons; and
- At least an additional 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to low-income persons or eligible sponsors who will serve low-income persons.

This provision expires on July 1, 2029, and applies retroactively.

The bill provides for a county that has been designated as an area of critical state concern that levies a tourist development tax and a tourist impact tax to use its accumulated surplus from those taxes collected through September 30, 2024, for the purpose of providing affordable housing for employees of tourism-related businesses in the county. Any housing financed with funds from this surplus must be used as affordable housing for a minimum of 99 years.

#### 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.
- Section 3: Amends s. 196.1979, F.S., relating to county and municipal affordable housing property exemption.
- Section 4: Amends s. 380.0552, F.S., relating to requirements to local comprehensive plans relating to the hurricane evaluation study.
- Section 5: Amends s. 680.0666, F.S., relating to powers of land authorities.
- Section 6: Amends s. 420.9075, F.S., relating to local housing assistance plans.
- Section 7: Provides for the one-time use of certain tourist development tax proceeds for certain purposes.
- Section 8: Provides an effective date of July 1, 2024.

### 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:  
The Revenue Estimating Conference has not estimated the impact of the bill as amended, but staff estimates that the recurring negative local revenue impact to Monroe County from the provisions allowing modified local option affordable housing local exemptions could be significant. These impacts apply at the option of the local government, however, so staff estimates that the revenue impact to local governments will be recurring negative indeterminate.
2. Expenditures:

The bill provides for a one-time use of accumulated tourist development and tourist impact taxes in Monroe County to provide certain affordable housing.

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 expenditure 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

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment allows for a county that has been designated as an area of critical state concern that levies a tourist development tax and a tourist impact tax to transfer its cumulative surplus from those taxes incurred through September 30, 2024, for the purpose of providing affordable housing for employees whose housing opportunities are impacted by the operation of tourist-related businesses in the county. Any housing financed with funds from this surplus will maintain its status as affordable housing for a minimum of 99 years.

On February 8, 2024, the Ways & Means Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Fixed a drafting error that added single-family homes and duplexes to the types of properties that could potentially qualify for the existing local option affordable housing property tax exemption for projects statewide, when the intent was for this to apply only in Monroe County,
- Made wording changes to more clearly allow for local option affordable housing projects in Monroe County that have fewer than 50 units, and
- Made technical changes to clarify that accumulated tourist development taxes and tourist impact taxes in Monroe County as of the end of this local fiscal year will be used to provide specific affordable housing, and that the housing financed this way must be used for affordable housing for 99 years.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.