

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/CS/SB 1456

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senator Rodriguez

SUBJECT: Counties Designated as Areas of Critical State Concern

DATE: February 21, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Byrd</u>	<u>Khan</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1456 makes the following changes to current law, applying specifically to the Florida Keys or the City of Key West Areas of Critical State Concern:

- Revises hurricane evacuation clearance time criteria;
- Authorizes land authorities to require compliance with income limitations on land conveyed for affordable housing by memorializing the original land authority funding or contribution in a recordable perpetual deed restriction;
- Exempts a county or municipality whose land has been designated by the Legislature as an area of critical state concern within the past five years, and for which the Legislature has declared an intent to provide affordable housing, from a requirement to specified portions of the local housing assistance trust fund to provide assistance to very-low-income and low-income persons; and
- Allows a county that has been designated as an area of critical state concern and that levies a tourist development tax and a tourist impact tax to use the accumulated surplus from those taxes incurred through September 30, 2024 for affordable housing. The expenditure of funds cannot exceed \$35 million and is subject to approval by a majority vote of the board of county commissioners. Affordable housing must be available to employees of private sector tourism-related businesses in the county. Any housing financed from the accumulated surplus must be used to provide affordable housing for no less than 99 years.

The bill takes effect on July 1, 2024.

II. Present Situation:

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 Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.¹ 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. Principles include protecting the environmental resources, historical heritage, and water quality of the Florida Keys.²

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 such actions must be approved by the Florida Department of Commerce (“Commerce”).³ Amendments to local comprehensive plans must also be reviewed for compliance with several requirements: construction schedules, financing plans and compliance with construction standards for wastewater treatment and disposal facilities, and protection of public safety with maintenance of hurricane evacuation clearance time with standards developed by a hurricane evacuation study conducted under professionally accepted methodology.

Hurricane Evacuation Clearance Standards in the Florida Keys

The Florida Keys Area Protection Act⁴ 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.” 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.⁵

In 2011, Commerce and the Division of Emergency Management entered 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. As part of the MOU, Commerce facilitated a study in 2012 to model the 24-hour evacuation time for hurricanes using the Transportation Interface for Modeling Evacuations (TIME) Model. The 2012 model uses a two-phase evacuation that encompasses the whole of the Florida Keys.

- Phase 1 occurs 24-48 hours in advance of tropical storm force winds and includes the evacuation of tourists, mobile homeowners, the dorms associated with the College of the Florida Keys, and other non-permanent residents.

¹ The City of Key West functions as a separate area of critical state concern, called the City of Key West Area of Critical State Concern, with similar restrictions. Section 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-cnty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2 (last visited Feb.16, 2024).

² For a full list of required considerations, *see* s. 380.0552(7), F.S.

³ Section 380.0552(9)(a), F.S.

⁴ Section 380.0552, F.S.

⁵ Section 380.0552(9)(a)2.

- Phase 2 occurs 0-24 hours in advance of tropical force winds and includes the evacuation of all permanent residents.⁶

In 2022, the third district court of appeals held that the City of Key West Area of Critical State Concern, which covers Key West, is not subject to the 24-hour evacuation requirement. Additionally, the third district court of appeals also held that mobile home units must be categorized as permanent residents under the statutory evacuation mandate. This means that mobile home residents should evacuate in phase 2.⁷ In 2023, Commerce facilitated the update of the TIME Model to account for these changes and incorporate recent data. The 2023 model also includes 1,300 workforce-affordable early-evacuation units in phase 1.⁸

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.⁹ 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.¹⁰ Monroe County is the only county in the state that has established a land authority pursuant to this statutory authority.¹¹

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.¹² The governing body of the land authority is the governing board of the county.¹³

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.¹⁴

⁶ Dept. of Commerce, *Florida Keys Hurricane Evacuation Modeling Report*, December 2023, 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 Feb. 16, 2024).

⁷ *Mattino v. City of Marathon*, 345 So. 3d 939 (Fla. 3d DCA 2022).

⁸ *Id.*

⁹ Section 380.0663(1), F.S.

¹⁰ Section 380.0661(1), F.S.

¹¹ See Monroe County, *Monroe County Land Authority*, available at: <https://www.monroecounty-fl.gov/272/Land-Authority> (last visited Feb.16, 2024).

¹² Section 380.0661(2), F.S.

¹³ Section 380.0663(1), F.S.

¹⁴ Section 380.0666, F.S.

Monroe County Land Authority

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.¹⁵ 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 the City of Key West Areas of Critical State Concern.¹⁶

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.¹⁷

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,¹⁸ published annually by the United States Department of Housing and Urban Development (HUD).¹⁹ The following are standard household income level definitions and their relationship to the 2023 Monroe County, Florida AMI of \$97,100 for a family of four (as family size changes, the income range also varies):²⁰

- Extremely low income – earning up to 30 percent AMI (at or below \$32,550);²¹
- Very low income – earning from 30.01 to 50 percent AMI (\$32,551 to \$54,250);²²
- Low income – earning from 50.01 to 80 percent AMI (\$54,251 to \$86,800).²³
- Moderate income – earning from 80.01 to 120 percent of AMI (\$86,801 to \$130,200).^{24, 25}

State Housing Initiatives Partnership (SHIP) program

The SHIP program was created in 1992²⁶ to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily

¹⁵ Monroe County, *Monroe County Land Authority*, available at: <https://www.monroecounty-fl.gov/272/Land-Authority> (last visited Feb. 16, 2024).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 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#2022> (last visited Feb. 16, 2024).

¹⁹ HUD User, Office of Policy Development and Research, "Income Limits," available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Feb. 16, 2024) (SMI and AMI available under the "Access Individual Income Limits Area" dataset).

²⁰ 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 Feb. 16, 2024).

²¹ Section 420.0004(9), F.S.

²² Section 420.0004(17), F.S.

²³ Section 420.0004(11), F.S.

²⁴ Section 420.0004(12), F.S.

²⁵ University of Florida Shimberg Center for Housing Studies, *Florida Housing Income Limits, 2023*, available at: <http://flhousingdata.shimberg.ufl.edu/income-and-rent-limits/results?nid=1> (last visited Feb. 20, 2024).

²⁶ Chapter 92-317, Laws of Fla.

housing. The SHIP program provides funds to all 67 counties and 55 Community Development Block Grant²⁷ entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.^{28, 29}

SHIP program funds may be used to fund 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.³⁰

Certain statutory requirements restrict a local government's use of funds made available under the SHIP program (excluding amounts set aside for administrative costs). Requirements include that a minimum of 65 percent of funds must be spent on eligible homeownership activities.³¹ At least 30 percent of funds deposited into the local housing assistance trust fund 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.³²

Tourist Development Taxes

The Local Option Tourist Development Act³³ authorizes counties to levy five separate taxes on transient rental³⁴ 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.³⁵
- 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.³⁶
- A high tourism impact tax may be levied at an additional 1 percent.³⁷
- A professional sports franchise facility tax may be levied up to an additional 1 percent.³⁸

²⁷ The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

²⁸ Florida Housing Finance Corporation, Annual Report 2022, available at: <https://www.floridahousing.org/data-docs-reports/annual-reports> (last visited Feb. 16, 2024).

²⁹ See ss. 420.907-420.9089, F.S.

³⁰ See ss. 420.907-420.9089, F.S. and Florida Housing Finance Corporation, *State Housing Initiatives Partnership (SHIP)*, available at: <https://www.floridahousing.org/programs/special-programs/ship---state-housing-initiatives-partnership-program> (last visited Feb. 16, 2024).

³¹ Section 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.

³² Section 420.9075(5), F.S.

³³ Section 125.0104, F.S.

³⁴ Section 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.

³⁵ Section 125.0104(3)(c), F.S.

³⁶ Section 125.0104(3)(d), F.S.

³⁷ Section 125.0104(3)(m), F.S.

³⁸ Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training franchise facilities, and convention centers and to promote and advertise tourism.

- 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.³⁹

Counties levying TDT are authorized to use the revenues for a variety of uses, such as promoting and advertising tourism, constructing publicly owned and operated convention centers, beach restoration and maintenance projects, and professional sports franchise facilities. The types of allowed uses are specific to the TDT levied.

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 facilities⁴⁰ within the county located in areas designated as an area of critical state concern. 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.⁴¹ Currently, Monroe County is the only county eligible to levy this tax.⁴²

Fifty percent of revenue from the tourist development tax must be distributed to the governing body of the county where the revenue was generated and used to offset the loss of ad valorem taxes due to acquisitions. The other fifty percent must be transferred to the transferred to the land authority to be used in the area of critical state concern for which the revenue is generated.⁴³ The land authority may use the revenue to:

- Contribute to the county in which it is located and its most populous municipality or the housing authority of such county or municipality, at the request of the county commission or the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality or any other area of the county.⁴⁴
- Pay costs related to affordable housing projects, such as the cost of acquiring real property or site preparation.⁴⁵

III. Effect of Proposed Changes:

Section 1 amends s. 380.0552, F.S., to provide that mobile home residents are not considered permanent residents, and that the City of Key West Area of Critical State Concern will be included in Commerce's hurricane evacuation modeling and is subject to 24-hour evacuation requirements.

³⁹ Section 125.0104(3)(n), F.S.

⁴⁰ Section 125.0108, F.S., considers transient rentals to be the rental, lease, or use of any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less, unless such establishment is exempt from the tax imposed by s. 212.03, F.S.

⁴¹ Section 125.0108, F.S.

⁴² Office of Economic and Demographic Research, *2023 Florida Tax Handbook*, page 306, available at: <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf> (last visited Feb. 16, 2024).

⁴³ Section 125.0108(3), F.S.

⁴⁴ Section 380.0666(3)(a), F.S.

⁴⁵ Section 380.0666(3)(b), F.S.

Section 2 amends s. 380.0666, F.S., to authorize land authorities to require compliance with income limitations on land conveyed for affordable housing homeownership units by memorializing the original land authority funding or contribution 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.

Section 3 amends s. 420.9075, F.S., to provide that a county or municipality 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:

- 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.

Section 4 allows a county that has been designated as an area of critical state concern and that levies a tourist development tax and a tourist impact tax to use the accumulated surplus from those taxes incurred through September 30, 2024 for affordable housing. The bill defines “accumulated surplus” to mean the accumulated excess of revenue over expenditure from prior years which has not been set aside for a specific purpose. The funds may be held by the county or the land authority. The expenditure of funds cannot exceed \$35 million and is subject to approval by a majority vote of the board of county commissioners.

The bill also specifies that affordable housing must meet the definition of section 420.0004, F.S. and be available to employees of private sector tourism-related businesses in the county. Any housing financed from the accumulated surplus must be used to provide affordable housing for no less than 99 years.

Section 5 provides that the bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, section 18 of the Florida Constitution. Therefore, the provisions of Article VII, section 18 of the Florida Constitution may not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Key West and the Florida Keys will have more flexibility in utilizing land authority powers and SHIP funding, but the bill is not expected to have an absolute impact on total funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 380.0552, 380.0666, and 420.9075.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on February 20, 2024:

The committee substitute makes several changes related to the revenue surplus of a county that has been designated as an area of critical state concern and that levies a tourist development tax and a tourist impact tax:

- Specifies that the accumulated surplus must be used to provide affordable housing that is available to employees of private sector tourism-related businesses in the county. Clarifies that any housing financed from the accumulated surplus must be used to provide affordable housing for no less than 99 years.
- Replaces the term “cumulative surplus” with “accumulated surplus” and provides a definition. “Accumulated surplus” means the accumulated excess of revenue over expenditure from prior years which has not been set aside for a specific purpose.
- Specifies that the accumulated surplus may be held by a county or by a land authority.
- Requires that the expenditure of funds cannot exceed \$35 million and is subject to approval by a majority vote of the board of county commissioners.

The committee substitute also changes a reference from “the Key West Area pursuant to chapter 28-36, Florida Administrative Code, as amended, effective August 23, 1984” to “The City of Key West Area of Critical State Concern established by chapter 28-36, Florida Administrative Code.” The committee substitute specifies that this entity is subject to specified evacuation requirements. Lastly, the committee substitute removes “modeling” so that requirements refer only to “hurricane evacuation clearance time.”

CS by Community Affairs on February 6, 2024:

The committee substitute:

- Removes provisions of the bill which exempt the Florida Keys Area of Critical State Concerns from the provision which allows the governing body of a county or municipality to approve the development of affordable housing, where state or local law or regulation would otherwise preclude such development.
- Removes provisions of the bill modifying provisions of the local option ad valorem property tax exemption for affordable housing developments.
- Clarifies the provisions of the bill allowing Monroe County to utilize tourist development tax revenues for affordable housing purposes. The substitute requires any housing financed with these funds must maintain its affordable housing status for a period of no less than 99 years.

- B. **Amendments:**

None.