

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/CS/HB 995](#)

TITLE: Areas of Critical State Concern

SPONSOR(S): Mooney

COMPANION BILL: [CS/SB 1326](#) (Rodriguez)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Natural Resources &
Disasters](#)
17 Y, 0 N



[Ways & Means](#)
18 Y, 0 N, As CS



[Agriculture & Natural
Resources Budget](#)
15 Y, 0 N, As CS



[State Affairs](#)

SUMMARY

Effect of the Bill:

The bill requires Monroe County, the Village of Islamorada, the City of Marathon, the City of Layton, and the City of Key West to maintain building permit allocation systems limiting the number of building permits issued for new residential dwelling units. The bill requires the Administration Commission to distribute 825 building permit allocations over a period of at least ten years to Monroe County and specified cities. The bill increases the evacuation clearance time of the Florida Keys Area of Critical State Concern (Florida Keys Area) from 24 hours to 24.5 hours or 825 building permit allocations, whichever is less.

The bill exempts a person who enters into a formal contract with the state or other entities for construction of public buildings from executing the required payment and performance bond if certain conditions are met.

The bill extends the time period during which at least \$5 million of Florida Forever funding must be spent each fiscal year on land acquisition within the Florida Keys Area.

Fiscal or Economic Impact:

The bill may have an indeterminate positive impact on local government due to the increase in building permits.

JUMP TO

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

[BILL HISTORY](#)

ANALYSIS

EFFECT OF THE BILL:

Building Permit Allocations

The bill requires Monroe County, the Village of Islamorada, the City of Marathon, the City of Layton, and the City of Key West to maintain building permit allocation systems limiting the number of [building permits](#) issued for new residential dwelling units. (Section [3](#))

The bill requires the Administration Commission¹ to distribute 825 building permit allocations over a period of at least 10 years. The building permits must be allocated as follows:

- 539 for Monroe County.
- 71 for the Village of Islamorada.
- 187 for the City of Marathon.
- 28 for the City of Key West, which must be for [affordable housing](#).

Of the 825 building permit allocations, the bill requires at least 70 percent to be designated as [workforce housing](#), with an exception for those allocations distributed to the City of Key West. The bill defines “workforce housing” to mean residential dwelling units restricted to occupancy by households that derive at least 70 percent of their

¹ The Administration Commission is composed of the Governor and the Cabinet.

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household income from gainful employment in Monroe County supplying goods or services to Monroe County residents or visitors for at least 99 years. (Section [3](#))

The bill requires the 825 building permit allocations to be awarded to a vacant, buildable parcel, and specifies that only one building permit allocation may be awarded to any parcel, and the distribution must prioritize allocation for owner-occupied residences, affordable housing, and workforce housing, with an exception for those allocations distributed to the City of Key West. (Section [3](#))

[Hurricane Evacuation Clearance Time](#)

The bill increases the hurricane evacuation clearance time for permanent residents in the [Florida Keys Area of Critical State Concern](#) (Florida Keys Area). Specifically, the bill requires a hurricane evacuation clearance time of no more than 24.5 hours, or 825 building permit allocations, whichever is less, instead of the current 24-hour time period. (Section [3](#))

[Payment and Performance Bonds](#)

The bill exempts a person who enters into a formal contract with the state or any county, city, political subdivision, or other public authority or private entity for the construction, completion, or repair of public buildings or public works from executing the required payment and performance bond if the following conditions are met:

- The work is done on property located within an area of critical state concern that is subject to a long-term ground lease of 99 years or more with Habitat for Humanity International, Inc., or any of its local affiliates, at the discretion of the official or board that owns the subject underlying property in fee simple.
- The leasehold interest created by the ground lease of 99 years or more is subject to any claims by claimants who are lienors and applicable lien provisions. The underlying real property owned by the state, or any county, city, or political subdivision thereof, or other public authority is not subject to any lien rights established in ch. 713, F.S. (Section [1](#))

[Florida Forever Funding](#)

The bill extends the time period during which at least \$5 million of Florida Forever funding must be spent each fiscal year on land acquisition within the Florida Keys Area. Specifically, the bill requires such spending to continue through the 2035-2036 fiscal year, instead of ending after the 2026-2027 fiscal year. (Section [2](#))

[Effective Date](#)

The effective date of the bill is July 1, 2025. (Section [4](#))

The bill may have an indeterminate positive impact on local government due to the increase in building permits.**RELEVANT INFORMATION**

SUBJECT OVERVIEW:

[Areas of Critical State Concern](#)

In 1972, the Florida Environmental Land and Water Management Act was enacted, creating the Areas of Critical State Concern (ACSC) Program. The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.² The ACSC designation denotes areas that contain natural resources of regional or statewide importance, areas that are or will be significantly affected by major public facilities, or areas of major development potential.³

² Florida Commerce, *Areas of Critical State Concern Program*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Mar. 4, 2025).

³ The Green Swamp, *History*, <https://www4.swfwmd.state.fl.us/greenswamp/history> (last visited Mar. 4, 2025).

Areas currently designated as ACSCs include the Big Cypress Area,⁴ the Green Swamp Area,⁵ the Florida Keys Area,⁶ the Brevard Barrier Island Area,⁷ and the Apalachicola Bay Area.⁸

Florida Keys Area of Critical State Concern

In 1975, the Florida Keys Area was designated as an ACSC, including unincorporated Monroe County and its municipalities, including Islamorada, Marathon, Layton, and Key Colony Beach.⁹ In 1984, the City of Key West was also designated as an ACSC.¹⁰ 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.
- 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.
- Ensure that the population of the Florida Keys can be safely evacuated.¹¹

Development Plans

State, regional, and local governments in the Florida Keys Area are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development that, among other topics, strengthen local government capabilities for managing land use and development so that local governments are able to achieve local objectives without continuing the ACSC and make available adequate, affordable housing for all sectors of the population of the Florida Keys.¹² 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 Commerce (COM).¹³

Building Permits

Monroe County and various municipalities within the Florida Keys Area have adopted growth control ordinances based on the Florida Keys Area carrying capacity.¹⁴ The carrying capacity is the lowest time required to safely evacuate the Florida Keys Area in the event of a hurricane, which is based on a 24-hour evacuation model.¹⁵ These

⁴ Section [380.055, F.S.](#)

⁵ Section [380.0551, F.S.](#)

⁶ Section [380.0552, F.S.](#)

⁷ Section [380.0553, F.S.](#)

⁸ Section [380.0555, F.S.](#)

⁹ Section [380.0552, F.S.](#); Florida Commerce, *2023 Florida Keys Area of Critical State Concern Annual Report*, available at <https://www.myflorida.com/myflorida/cabinet/agenda23/0326/ADCOM.pdf> (last visited Mar. 7, 2025).

¹⁰ 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 Id.*

¹¹ Sections [380.0552\(2\)\(a\)-\(j\), F.S.](#)

¹² Section [380.0552\(7\), F.S.](#)

¹³ Section [380.0552\(9\)\(a\), F.S.](#)

¹⁴ Monroe County, *ROGO/NROGO System*, <https://www.monroecounty-fl.gov/186/ROGONROGO-System> (last visited Mar. 7, 2025).

¹⁵ *Id.*

ordinances, referred to as rate of growth ordinances¹⁶ or building permit allocation systems,¹⁷ use a point system to allot permits.¹⁸

The current permit allocations for Monroe County and its municipalities are as follows:

- Monroe County: 197 annually with a minimum of 71 units being allocated for affordable housing;¹⁹
- City of Key West: 91 per year over 10 years from 2013 to 2023;²⁰
- City of Marathon: 30 annually;²¹ and
- Village of Islamorada: 22 annually allocated to market rate units and six to affordable units.²²

Hurricane Evacuation Clearance Times

Amendments to local comprehensive plans must be reviewed for compliance with, among other considerations, the 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 COM.²³

In 2011, the Administration Commission directed COM 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.²⁴ The MOU is the basis for an analysis of the maximum build-out capacity of the Florida Keys Area while maintaining the ability of the permanent population²⁵ to evacuate within 24 hours.²⁶

Zoning and Land Use for Affordable Developments

The Growth Management Act requires every county and municipality to create and implement a comprehensive plan to guide future development.²⁷ All development, both public and private, and all development orders²⁸ approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.²⁹ 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 within that range are decided by a more detailed, implementing zoning map.³⁰

¹⁶ *Id.*

¹⁷ See Village of Islamorada, *Building Permit Allocation System (BPAS)*, <https://www.islamorada.fl.us/308/Building-Permit-Allocation-System-BPAS> (last visited Mar. 7, 2025).

¹⁸ See City of Marathon, *Building Permit Allocation System Residential Development Summary Scoring Sheet*, available at https://www.ci.marathon.fl.us/sites/default/files/fileattachments/planning/page/4751/residential_score_sheet_220714.pdf (last visited Mar. 7, 2025).

¹⁹ Rule 28-20.140(2)(b), F.A.C.

²⁰ City of Key West, *Annual Allocation Schedule*, <https://www.cityofkeywest-fl.gov/345/Annual-Allocation-Schedule> (last visited Mar. 7, 2025).

²¹ Rule 28-18.400(2)(a), F.A.C.

²² Rule 28-19.400(2)(a), F.A.C.

²³ Section 380.0552(9)(a)2., F.S.

²⁴ COM, *2023 Florida Keys Hurricane Evacuation Modeling Report*, page 2, available at https://www.floridajobs.org/docs/default-source/community-planning-development-and-services/evacuation-modeling-report-final-with-appendices79bb3ca4cbbb61cbb02aff01004f56df.pdf?sfvrsn=47005db0_10 (last visited Mar. 7, 2025).

²⁵ Mobile home residents are not considered permanent residents for purposes of evacuation clearance time. Section 380.0552(9)(a)2.a., F.S.

²⁶ COM, *2023 Florida Keys Hurricane Evacuation Modeling Report*, available at https://www.floridajobs.org/docs/default-source/community-planning-development-and-services/evacuation-modeling-report-final-with-appendices79bb3ca4cbbb61cbb02aff01004f56df.pdf?sfvrsn=47005db0_10 (last visited Mar. 7, 2025).

²⁷ Section 163.3167(2), F.S.

²⁸ "Development order" means any order granting, denying, or granting with conditions an application for a development permit. Section 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. Section 163.3164(16), F.S.

²⁹ Section 163.3194(3), F.S.

³⁰ Section 163.3177(6)(a), F.S.

Counties and municipalities may, notwithstanding any other law or local ordinance or regulation to the contrary, approve the development of affordable housing, including mixed-use residential developments, on any parcel zoned for commercial or industrial use where a state or local law or regulation would otherwise preclude such development.³¹ At least 10 percent of the units in such a project on a commercial or industrial parcel must be affordable.³² This provision allows local governments to expedite the development of affordable housing by allowing local governments to bypass state law and their comprehensive plans and zoning regulations that would otherwise preclude or delay such development.

Workforce Housing

In response to the need for affordable housing, COM developed, and in 2018, the Administration Commission approved, the Keys Workforce Housing Initiative (Initiative).³³ The Initiative 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.³⁴

The Live Local Act provided that the Initiative is an exception to the evacuation time constraints of the Florida Keys Protection Act.³⁵ 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.³⁶ The Legislature also provided that the comprehensive plan amendment approved by COM to implement the Initiative is valid and authorizes the respective local government to adopt ordinances or regulations to implement the plan amendment.³⁷

Payment and Performance Bonds

A payment bond is a type of surety bond that generally guarantees that all subcontractors, laborers, and material suppliers will be paid for their work on or materials contributed to a construction project.³⁸ It forms a three-part contract between the owner, the contractor, and the surety to ensure that liens are not filed on the property, serving as the security for payment in lieu of the typical right to claim a lien. The payment bond must be furnished in at least the amount of the original contract price before beginning the construction project, and a copy of the bond must be attached to a recorded notice of commencement.³⁹

A person who enters into a formal contract with the state or any public authority, or a private entity, for the construction of a public building, completion of a public work, or for repairs upon a public building or public work is required to execute and record a payment and performance bond with a surety insurance authorized to do business in the state as surety.⁴⁰ The payment and performance bond must be obtained before any work is started.⁴¹ A public entity cannot require a contractor to secure a surety bond from a specific agent or bonding company.⁴²

Florida Forever Funding

³¹ Section [125.01055\(6\), F.S.](#); Section [166.04151\(6\), F.S.](#)

³² *Id.*

³³ 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 Mar. 7, 2025).

³⁴ *Id.*

³⁵ Ch. 2023-17, s. 42, L.O.F.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section [713.23, F.S.](#)

³⁹ Section [713.23\(1\)\(a\), F.S.](#)

⁴⁰ Section [255.05\(1\), F.S.](#)

⁴¹ *Id.*

⁴² *Id.*

The Florida Forever Program is the state’s conservation and recreation lands acquisition program.⁴³ Since 2001, the state has purchased more than 907,412 acres of land for approximately \$3.3 billion.⁴⁴ Florida Forever supports a wide range of goals, including water resource protection, coastal resiliency, preservation of cultural resources, public access to outdoor recreation, and the restoration and maintenance of public lands.⁴⁵

In 1999, the Legislature created the Florida Forever Trust Fund to distribute state funds for land acquisition and conservation purposes.⁴⁶ The Florida Forever Act⁴⁷ establishes a statutory scheme for the distribution of funds from the Florida Forever Trust Fund.⁴⁸ As a part of that distribution, beginning in the 2017-2018 fiscal year and continuing through the 2026-2027 fiscal year, at least \$5 million must be distributed to the Department of Environmental Protection (DEP) to be used for land acquisition within the Florida Keys Area each year.⁴⁹ These funds have been appropriated as fixed capital outlay grants and aids through the General Revenue Fund to DEP as part of a \$20 million sum related to the Florida Keys Area.

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/SB 1456	Mooney	Rodriguez	The bill became law on July 1, 2024.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Natural Resources & Disasters Subcommittee	17 Y, 0 N	3/18/2025	Moore	Gawin
Ways & Means Committee	18 Y, 0 N, As CS	3/27/2025	Aldridge	Berg
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> Removed the change to the affordable housing exemption in s. 196.1978 Increased the number of available permit allocations to 825 			
Agriculture & Natural Resources Budget Subcommittee	15 Y, 0 N, As CS		Topp	Byrd
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> Specifies the allocation of the 825 permits to the recipient cities. Prioritizes distribution to include owner-occupied residences, affordable housing and workforce housing. 			
State Affairs Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

⁴³ Section [259.105, F.S.](#) Such acquisitions include less-than-fee agreements.

⁴⁴ Department of Environmental Protection, *Florida Forever*, <https://floridadep.gov/floridaforever> (last visited Mar. 7, 2025).

⁴⁵ See section [259.105\(2\)\(a\), F.S.](#)

⁴⁶ Section [259.105\(3\), F.S.](#); Section [259.1051, F.S.](#)

⁴⁷ Section [259.205, F.S.](#)

⁴⁸ Section [259.105\(3\)\(b\), F.S.](#)

⁴⁹ *Id.*