

House Bill No. 1299

An act relating to areas of critical state concern; amending s. 125.0108, F.S.; authorizing the continued levy of the tourist impact tax for a certain period in areas of critical state concern removed from designation; providing for continued levy beyond that period pursuant to referendum approval of an ordinance reauthorizing the levy; amending s. 212.055, F.S.; authorizing certain counties to continue the use of a portion of local government infrastructure surtax proceeds for certain purposes for a certain period after removal of designation of an area as an area of critical state concern; providing for continued use of a portion of such proceeds for certain purposes pursuant to ordinance; amending s. 380.0552, F.S.; providing requirements, procedures, and criteria for Administration Commission removal of designation of the Florida Keys Area as an area of critical state concern; requiring removal of the designation under certain circumstances; providing for judicial review of Administration Commission determinations; requiring review of proposed comprehensive plans and amendments to existing plans after removal of designation and providing review criteria; amending s. 380.0666, F.S.; revising the powers of a land authority in an area of critical state concern to acquire property to provide affordable housing; providing for continued power of a land authority to acquire property within an area of critical state concern removed from designation; amending s. 380.0674, F.S.; providing for the continuation of a land authority in an area of critical state concern after removal of the designation; amending s.4, ch. 99-395, Laws of Florida; authorizing local governments in areas of critical state concern removed from designation to continue to enact ordinances relating to central sewerage systems; providing for continuation of existing state liability in certain inverse condemnation actions related to the Florida Keys Area after removal of designation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) is added to subsection (1) of section 125.0108, Florida Statutes, to read:

125.0108 Areas of critical state concern; tourist impact tax.—

(1)

(g) A county that has levied the tourist impact tax authorized by this section in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to levy the tourist impact tax in accordance with this section for 20 years following removal of the designation. After expiration of the 20-year period, a county may continue to levy the tourist impact tax authorized by this section if the county adopts an ordinance reauthorizing levy of the tax and the continued levy of the tax is approved by referendum as provided for in subsection (5).

Section 2. Paragraph (f) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(f)1. Notwithstanding paragraph (d), a county that has a population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

- a. The debt service obligations for any year are met;
- b. The county's comprehensive plan has been determined to be in compliance with part II of chapter 163; and
- c. The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66 authorizing additional uses of the surtax proceeds and interest.

2. A municipality located within a county that has a population of 50,000 or less on April 1, 1992, or within a county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may not use the proceeds and interest of the surtax for any purpose other than an infrastructure purpose authorized in paragraph (d) unless the municipality's comprehensive plan has been determined to be in compliance with part II of chapter 163 and the municipality has adopted an amendment to its surtax ordinance or resolution pursuant to the procedure provided in s. 166.041 authorizing additional uses of the surtax proceeds and interest. Such municipality may expend the surtax proceeds and interest for any public purpose authorized in the amendment.

3. Those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section. A county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other

than for infrastructure purposes for 20 years following removal of the designation, notwithstanding subparagraph (a)2. After expiration of the 20-year period, a county may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure if the county adopts an ordinance providing for such continued use of the surtax proceeds.

Section 3. Subsection (4) of section 380.0552, Florida Statutes, is amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

(4) REMOVAL OF DESIGNATION.—

(a) Between July 12, 2008, and August 30, 2008, the state land planning agency shall submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of the work program as defined in paragraph (c) and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. Subsequent to receipt of the report, the Administration Commission shall determine, prior to October 1, 2008, whether substantial progress has been achieved toward accomplishing the tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section shall be removed October 1, 2009, unless the Administration Commission finds, after receipt of the state land planning agency report, that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Administration Commission, within 60 days after removal of the designation, shall initiate rulemaking pursuant to chapter 120 to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If, after receipt of the state land planning agency's report, the Administration Commission finds that substantial progress toward accomplishing the tasks of the work program has not been achieved, the Administration Commission shall provide a written report to the Monroe County Commission within 30 days after making such finding detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

(b) If the designation of the Florida Keys Area as an area of critical state concern is not removed in accordance with paragraph (a), the state land planning agency shall submit a written annual report to the Administration Commission on November 1 of each year, until such time as the designation is removed, describing the progress of the Florida Keys Area toward accomplishing remaining tasks under the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. The Administration Commission shall determine, within 45 days after receipt of the annual report, whether substantial progress has been achieved toward accomplishing the remaining tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section shall be removed

unless the Administration Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Administration Commission, within 60 days after removal of the designation, shall initiate rulemaking pursuant to chapter 120 to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If the Administration Commission finds that substantial progress has not been achieved, the Administration Commission shall provide to the Monroe County Commission, within 30 days after making its finding, a report detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

(c) For purposes of this subsection, the term “work program” means the 10-year work program as set forth in chapter 28-20.110, Florida Administrative Code, on January 1, 2006, excluding amendments to the work program that take effect after January 1, 2006.

(d) The determination of the Administration Commission as to whether substantial progress has been made toward accomplishing the tasks of the work program may be judicially reviewed pursuant to chapter 86. All proceedings shall be conducted in the circuit court of the judicial circuit where the Administration Commission maintains its headquarters and shall be initiated within 30 days after rendition of the Administration Commission’s determination. The Administration Commission’s determination as to whether substantial progress has been made toward accomplishing the tasks of the work program shall be upheld if it is supported by competent and substantial evidence and shall not be subject to administrative review under chapter 120.

(e) After removal of the designation as an area of critical state concern, the state land planning agency shall review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, the boundaries of which were described in chapter 28-29, Florida Administrative Code, as of January 1, 2006, for compliance with subparagraphs 1. and 2., in addition to reviewing proposed local comprehensive plans and amendments for compliance as defined in s. 163.3184. All procedures and penalties described in s. 163.3184 apply to the review conducted pursuant to this paragraph.

1. Adoption of construction schedules for wastewater facilities improvements in the annually adopted capital improvements element and adoption of standards for the construction of wastewater treatment facilities which meet or exceed the criteria of chapter 99-395, Laws of Florida.

2. Adoption of 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 shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency. The state land planning agency, following July 15, 1990, shall recommend to the

~~Administration Commission the removal of the designation specified in subsection (3) if it determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area and continue to carry out the legislative intent incorporated in subsection (2) and are in compliance with the principles for guiding development incorporated in subsection (7). If the Administration Commission concurs with the recommendations of the state land planning agency to remove the designation, it shall, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The state land planning agency shall thereafter make said determination annually, until such time as the designation is removed.~~

Section 4. Subsection (3) of section 380.0666, Florida Statutes, is amended to read:

380.0666 Powers of land authority.—The land authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers, which are in addition to all other powers granted by other provisions of this act:

(3) To acquire and dispose of real and personal property or any interest therein when such acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area very low income, low income, or moderate income persons, as defined in s. 420.0004, or provide access to management of acquired lands; to acquire interests in land by means of land exchanges; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority shall make such acquisition only if:

(a) Such acquisition is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;

(b) The property acquired is within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation; and

(c) The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for acquisition, to coordinate the acquisition and disposition of such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for eventual resale to other public land acquisition programs.

Section 5. Section 380.0674, Florida Statutes, is amended to read:

380.0674 Corporate existence.—

(1) The land authority and its corporate existence shall continue until terminated by law or action of the governing board of the county that established it; however, no such law or action shall take effect so long as the land authority shall have bonds outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of the land authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

(2) A land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation shall continue to exist and exercise all powers granted by this chapter until terminated by law or action of the governing board pursuant to subsection (1).

Section 6. Section 4 of chapter 99-395, Laws of Florida, is amended to read:

Section 4. Notwithstanding any provision of chapter 380, part I, to the contrary, a local government within the Florida Keys area of critical state concern or an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may enact an ordinance that:

(1) Requires connection to a central sewerage system within 30 days of notice of availability of services; and

(2) Provides a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

Section 7. If the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes. If, after the designation of the Florida Keys Area as an area of critical state concern is removed, an inverse condemnation action is initiated based upon land use regulations that were not adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission and in effect on the date of the designation's removal, the state's liability in the inverse condemnation action shall be determined by the courts in the manner in which the state's liability is determined in areas that are not areas of critical state concern. The state shall have standing to appear in any inverse condemnation action.

Section 8. This act shall take effect July 1, 2006.

Approved by the Governor June 14, 2006.

Filed in Office Secretary of State June 14, 2006.