SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 872

SPONSOR: Senator Latvala and others

SUBJECT: Hurricane Loss Mitigation

DATE: April 12, 1999 REVISED: 4/15/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Fav/1 amendment
2.	Emrich	Deffenbaugh	BI	Fav/1 amendment
3.	Hayes	Hadi	FP	Fav/1 amendment
4.				
5.				

I. Summary:

This bill creates the Hurricane Loss Mitigation Clearing Trust Fund (HLMCTF), under the administration of the Comptroller, to receive investment moneys transferred from the Florida Hurricane Catastrophe Fund (Cat Fund) to provide funding for hurricane mitigation programs. Specifically, SB 872 mandates that the State Board of Administration (SBA) annually transfer from the Cat Fund to the HLMCTF the amount of $10 million, plus an additional amount such that the total would not exceed 35 percent of the amount of investment income in the Cat Fund the previous year. The SBA could limit the transfer of these funds to $10 million if it finds that the additional appropriation would jeopardize the actuarial soundness of the Cat Fund based on the Cat Fund premium formula approved by the SBA, or if such a transfer would result in higher Cat Fund premiums being charged. The moneys in the Hurricane Loss Mitigation Clearing Trust Fund would be allocated as follows:

- Eighty-five percent to the Department of Community Affairs to be used for programs to improve wind resistance of residences and mobile homes, with 40 percent of these funds to be used specifically for programs affecting mobile homes. In the second year of the program, the percentage allocated to mobile homes would be reduced to 30 percent, and to 20 percent in the following years.

- Ten percent to the State University System to be used for research regarding hurricane loss reduction devices and techniques for residences and mobile homes with regard to developing data on potential loss reductions; and,

- Five percent to the Department of Insurance to be used for consumer education and awareness.

This bill amends section 215.555, F.S., 1998 Supplement, and creates section 215.559, F.S.

II. Present Situation:

Florida Hurricane Catastrophe Fund

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (Cat Fund) to provide a form of reinsurance for residential property insurers in the state (s. 215.555, F.S.). The Cat Fund is placed within the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for excess losses due to hurricanes.

Subsection (7) of s. 215.555, F.S., 1998 Supplement, directs the Legislature each fiscal year, beginning in fiscal year 1997-1998, to appropriate from the investment income of the Cat Fund at least $10 million, but no more than 35 percent of the investment income from the prior fiscal year for the purpose of funding local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to do the following:

- improve hurricane preparedness;
- reduce potential losses in the event of a hurricane;
- provide research into the means to reduce such losses;
- educate or inform the public as to the means to reduce hurricane losses;
- assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades; or
- protect local infrastructure from potential damage from a hurricane.

Moneys in excess of $10 million are not available for appropriation if the State Board of Administration finds that such an appropriation would jeopardize the actuarial soundness of the fund.

For fiscal year 1997-1998, the Legislature appropriated the $10 million from the Cat Fund, with $4.1 million to match grants from the Federal Emergency Management Agency, $3.1 million going to the Residential Construction Mitigation Program under the Department of Community Affairs (DCA), and $2.8 million for dune restoration. The Governor subsequently vetoed the $2.8 million appropriation for dune restoration. In his veto message Governor Chiles stated, “funding of these projects from these funds would set the wrong precedent; these funds should be for the purpose of enhancing residential mitigation.”

For fiscal year 1998-1999, there was $12.8 million available in the Cat Fund for the Legislature to appropriate which consisted of $10 million, plus the $2.8 million previously vetoed by the Governor. The Legislature appropriated $12.5 million (of the $12.8 million) from the Cat Fund, with $10 million to the Department of Community Affairs for Emergency Management ($7.5 million) and for Housing Mitigation ($2.5 million) and $2.5 million to the Department of Environmental Protection for beaches. Available for fiscal year 1999-2000, will be $10 million plus $300,000 remaining from fiscal year 1998-1999.

In 1995, legislative changes were made to the Cat Fund law (Ch. 95-1, L.O.F.) in order to secure a ruling from the Internal Revenue Service (IRS) that the Cat Fund is an integral part of state government and is non-taxable by the federal government. These changes were: (1) an expansion of the moneys available from the Cat Fund for a wider range of hurricane loss mitigation projects,

(2) an initial state capital contribution of $50 million from a broad-based revenue source, and (3) an increase from 2 percent to 4 percent in the emergency assessment on property and casualty insurance policies (a broad-based funding source).

Hurricane Mitigation Programs

According to the Department of Community Affairs' (DCA) 1998 publication "*Breaking the Cycle*," approximately 80 percent of Florida's population lives within five miles of the coast, the area most vulnerable to natural disasters. Forty percent of all National Flood Insurance Program flood policies are written in the state and almost 3 million Floridians reside in the projected storm surge zone for category I hurricanes. In recent years, Florida has experienced storms causing severe damage to our coastal communities and because of Florida's unique geographic location, it is anticipated that natural hazards will continue to threaten the state's residents and its infrastructure.

According to the department's Division of Emergency Management, the term "hazard mitigation" is defined as the undertaking of actions which help reduce or eliminate the loss of life and property from future disaster events. Mitigation, along with preparedness, response and recovery, comprises the four phases of emergency management. Proper use of hazard mitigation concepts provides a means by which to break the repetitive cycle of injury, loss of life and property, destruction and rebuilding caused by natural disaster events. Hazard mitigation is needed to ensure that post-disaster repairs, reconstruction and recovery occur after damages are analyzed, and that sounder, less vulnerable conditions are produced. In addition, when hazard mitigation is incorporated into economic or community development goals, it supports the accomplishment of a more comprehensive and effective government.

The following is a brief description of hazard mitigation programs currently funded in part by the federal government and administered by DCA:

- The **Hazard Minimization Program** offers grants to homeowners to address minor retrofitting, including installing hurricane tie downs or elevating utilities. Local governments are required to provide a 25 percent match in funds.

- The **Public Assistance Mitigation Program** provides funds to rebuild damaged public infrastructure above current codes and standards to better withstand future hurricanes. Local governments are required to provide a 25 percent match in funds.

- The **Hazard Mitigation Grant Program** provides funds to support a wide range of projects or programs, including mitigation planning, retrofitting critical facilities, property acquisition or elevation, and minor structural mitigation projects. Local governments are required to provide a 25 percent match in funds.

- The **Flood Mitigation Assistance Program** provides funds to support planning, the elevation or dry flood proofing of structures, relocation or demolition and minor structural flood control projects.

In 1995, the Federal Emergency Management Agency (FEMA) published the National Mitigation Strategy. The goal of the strategy is to "substantially increase public awareness of natural-hazard risk and - within 15 years - to significantly reduce the risk of loss of life, injuries, economic costs, and disruption of families and communities caused by natural hazards." The National Mitigation Strategy contains five major elements:

- Hazard identification and risk assessment for each community;
- Applied research and technology transfer to aid development of the best mitigation methods and promote the transfer of that technology to users;
- Public awareness, training and education to create broader public awareness of and support for mitigation;
- Incentives and resources to help communities achieve the goal; and
- Leadership and coordination to promote coordination and cooperation within and between different levels of government and the private sector.

According to the Florida Federation of Manufactured Home Owners, there are over 1 million manufactured (mobile) homes in Florida, many of which have defective tie-downs. Tie-downs are the heavy steel ties that anchor the home to the ground. Although Florida has more mobile homes than any other state, and potentially the fiercest winds in the country, Florida only began licensing mobile home installers in 1997. The recent tornados which occurred in Central Florida this past summer highlight the need to improve the installation and inspection of tie-downs.

III. Effect of Proposed Changes:

Section 1. Names the bill the "Bill Williams Residential Safety and Preparedness Act." Mr. Williams served as the President of the Florida Federation of Manufactured Home Owners until his recent death.

Section 2 Creates s. 215.559, F.S., to establish the Hurricane Loss Mitigation Clearing Trust Fund (HLMCTF) under the administration of the Comptroller, from funds transferred from the Cat Fund under s. 215.555(7)(c), F.S., 1998 Supplement. Such funds must be used to provide funding for local governments, state agencies, and nonprofit organizations to support programs intended to:

- improve hurricane preparedness;
- reduce potential losses in the event of a hurricane;
- provide research into the means to reduce hurricane losses;
- educate or inform the public as to the means to reduce hurricane losses; and
- assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades.

The Comptroller is directed to annually transfer CAT fund investment income in the following proportions:

- Eighty-five percent to the Grants and Donations Trust Fund of DCA, to be used for:
  - programs to improve the wind resistance of residences and mobile homes; in the first year of the program, 40 percent of these funds must be used for programs affecting

mobile homes, declining to 30 percent in the second year, and 20 percent in the following years;
- cooperative programs with local governments and the federal government; and
- other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

These programs are to be developed in consultation with a DCA appointed 5-member advisory council, which include a representative from the following: the Department of Insurance, home builders, insurance companies, the Federation of Mobile Home Owners, and mobile home manufacturers. Funds used for these purposes may not supplant other funding sources of DCA used for these purposes.

- Five percent to the Insurance Commissioners Regulatory Trust Fund, to be used by the Department of Insurance for consumer education, information, and outreach to encourage consumers to take actions that will reduce their property insurance costs. Funding for media campaigns must be matched by at least an equal amount of in-kind services, with a goal of three times the funds being matched. Funds used for these purposes may not supplant other funding sources of the department used for these purposes.

- Ten percent to the Operations and Maintenance Trust Fund of the Board of Regents (BOR), to support research and development, including demonstration projects, into hurricane loss reduction devices and techniques for residences and mobile homes. These funds must be matched by at least an equal amount of funds or in-kind services from entities other than the State University System. The BOR must consult with DCA prior to spending these funds.

DCA is required to report to the House and Senate on January 1, 2000, and annually thereafter, on the activities funded by the CAT fund investment income. End of the year trust fund balances must remain in the trust fund and must be available for carrying out the purposes of the trust fund. Balances remaining in the HLMCTF at the end of any fiscal year must remain in the trust fund and may be available for use in subsequent years.

Section 3. Amends s. 215.555(7)(c), F.S., 1998 Supplement, to delete the specified uses of fund proceeds, which were transferred to s. 215.559, F.S., as created in section 2 of this bill, and to require the transfer of a portion of the investment income from the Cat Fund to the HLMCTF. Annually, $10 million, plus an additional amount "such that the total amount transferred equals 35 percent of the investment income" of the Cat Fund for the prior year, must be transferred to the HLMCTF. However, the transfer amount "in excess of $10 million" must be limited if it is found to jeopardize the actuarial soundness of the CAT fund "based on the assumptions contained in the premium formula approved for that year" or if the appropriation "would have an adverse impact on rates."

Section 4. Provides that the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Article III, Section 19(f)(1) of the State Constitution states that:

> No trust fund of the State of Florida or other public body may be created by law without a three-fifths vote of the membership of each house of the Legislature in a separate bill *for that purpose only*.

Senate Bill 872 creates a trust fund, and provides for the funding of the trust fund and use of the trust fund moneys. While there may be some question as to whether this bill violates the constitutional restriction on the creation of trust funds, it appears that the funding and use provisions in the bill do not conflict with the restriction.

In 1996, the Florida Supreme Court considered the case of *American Bankers Insurance Company v. Chiles (675 So.2d 922 (Fla. 1996))*, where the constitutionality of chapter 93-409, L.O.F., was challenged. This law created the Cat Fund, which is funded by assessments on insurers and is administered by the State Board of Administration. The Supreme Court agreed with the decision of the First District Court of Appeal, which concluded that “the Legislature reasonably interpreted the constitutional provision to mean that items related to the purpose, administration, and funding should be included within a bill creating a trust fund. Matters relating to regulation and solvency of the fund clearly fall within the parameters of administration and funding.”

Since the provisions in SB 872 relate only to the “purpose and funding” of the HLMCTF, it appears that the bill does not violate Article III, Section 19(f)(1) of the State Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By directing funds to projects expected to reduce the cost of hurricane-related damage to residential structures, homeowners and mobile home owners, in particular, will benefit by having their homes retrofitted to withstand severe windstorms. Other homeowners and insurers would benefit to the extent that new retrofit techniques are demonstrated to be effective and are utilized. Florida citizens, particularly homeowners, will also benefit by being able to obtain information about protecting their homes and families from hurricane disaster.

C. Government Sector Impact:

Under the provisions of this bill, the State Board of Administration would transfer from the Florida Hurricane Catastrophe Fund (Cat Fund) to the Hurricane Loss Mitigation Clearing Trust Fund the amount of $10 million, plus an additional amount such that the total would not exceed 35 percent of the amount of investment income in the Cat Fund the previous year. The State Board of Administration would limit the transfer of these funds to $10 million if the Board finds that the additional appropriation would jeopardize the actuarial soundness of the Cat Fund based on the Cat Fund premium formula approved by the Trustees of the Board, or if such a transfer would result in higher Cat Fund premiums being charged.

The State University System will benefit by receiving funds for research regarding hurricane mitigation.

As existing housing stock becomes more wind resistant and communities experience less damage after a hurricane, the local government share of the 25 percent match required in order to receive funds from FEMA may be reduced. Local governments could realize an increase in their tax base as existing housing stock becomes more valuable and more desirable to consumers because of increased wind resistant structures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Narrowing the allowable uses of mitigation funding runs counter to one of the legislative changes made to the Cat Fund in 1995 to achieve tax-exempt status, which included a wider range of hurricane loss mitigation projects. However, representatives with the Cat Fund believe that the percentage allocations under this bill will not jeopardize the tax-exempt status of the Fund. Also, the creation of the Hurricane Loss Mitigation Clearing Trust Fund would assure that the $10 million would be appropriated from the Cat fund, thus making it less likely that a line item veto would jeopardize the tax exempt status of the Cat Fund.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs Committee:
This amendment requires that the representative of mobile home manufacturers appointed by the Secretary of DCA to the advisory council be a representative of the Florida Manufactured Housing Association.

#1 by Banking and Insurance Committee:

This amendment adds a representative of the Florida Association of Counties to the advisory council created by the bill, (increasing the number of members to six).

#1 by Fiscal Policy Committee:
This amendment provides that the individual appointed by the Secretary of DCA to the advisory council may be either a manufacturer or supplier.