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HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS

BILL #: HB 975

RELATING TO: Hurricane Loss Mitigation

SPONSOR(S): Representative Feeney and others

COMPANION BILL(S): HB 211 (i), SB 872 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
(2) FINANCE & TAXATION (W/D)
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

This bill creates the Hurricane Loss Mitigation Clearing Trust Fund (HLMCTF) to receive transfers from the Florida Hurricane Catastrophe Fund (Cat Fund) to provide funding for hurricane mitigation programs.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1993, as a result of Hurricane Andrew, the Legislature created the Florida Hurricane Catastrophe Fund (Cat Fund) to provide a form of reinsurance for residential property insurers in the state. Established pursuant to s. 215.555, Florida Statutes, the Cat Fund requires that each insurance company pay premiums into the fund, which are calculated based on actual catastrophic exposure. These premium costs are passed along to the consumer either in premium rates or in what is known as the Cat Fund Surcharge.

The Legislature is required to appropriate at least $10 million, but no more than 35 percent of the investment income from the Cat Fund "to support programs intended to improve hurricane preparedness, reduce potential losses in the event of a hurricane, provide research into means that will reduce such losses, educate or inform the public as to means that will 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, 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, "[f]unding of these projects from these funds would set the wrong precedent; these funds should be for the purpose of enhancing residential mitigation."

The Internal Revenue Service has declared the Cat Fund to be immune from federal taxation because it serves a public purpose, and the benefit to the private sector is incidental. The mandatory use of some Cat Fund moneys for the public purpose of mitigation was one of the factors relied on by the Internal Revenue Service in finding the Cat Fund to be tax exempt.

Article III, sec. 19(f)(1), Florida Statutes, provides that:

> No trust fund of the State of Florida or other public body may 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.

Trust fund bills must pass state constitutional muster as to the appropriate items that can be included in a bill creating a trust fund.

B. EFFECT OF PROPOSED CHANGES:

The Hurricane Loss Mitigation Clearing Trust Fund is created under the administration of the Comptroller. As a clearing trust fund, it is exempt from the termination requirements under Article III, Section 19(f), Florida Constitution. This trust fund contains funds transferred from the Cat Fund pursuant to s. 215.555(7)(c), Florida Statutes, 1998 Supplement. Money in the trust fund must be used to support programs intended to improve hurricane preparedness and reduce potential losses from a hurricane and provide research into methods that reduce such losses.

Beginning with the 1999-2000 fiscal year, the State Board of Administration must transfer $10 million, plus an additional amount so that the total amount transferred equals 35 percent of the investment income contained in the Cat Fund for the previous fiscal year. The State Board of Administration must 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.

Each fiscal year, moneys from the Hurricane Loss Mitigation Clearing Trust Fund must be allocated as follows:

- ♦ 85 percent must be transferred to the Grants and Donations Trust Fund of the Department of Community Affairs to be used for programs to improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; cooperative programs with local governments, and the Federal Government, and other efforts to prevent or reduce losses or costs of rebuilding after a disaster.

In the first year of the programs, at least 40% of the funds appropriated for loans, subsidies, grants demonstration projects or direct assistance must be used for mobile homes, including programs to inspect and improve tie-downs and other means to prevent losses. In the second year, at least 30% shall be used for mobile homes, and thereafter at least 20% shall be used for mobile homes.

The Department of Community Affairs must develop programs in consultation with an advisory council appointed by the secretary consisting of a representative from the Department of Insurance, a representative of the home builders, a representative of the insurance companies, a representative of the Federation of Mobile Home Owners, and a representative of a mobile home manufacturer.

- 5 percent must be transferred to the Insurance Commissioner's Regulatory Trust Fund to be used by the Department of Insurance for consumer education, information, and outreach to encourage consumers to reduce their property insurance costs. Part of these funds must go to a media public awareness campaign, provided that funding for the campaign is matched by an equal amount of in-kind services.

- 10 percent must be transferred to the Operations and Maintenance Trust Fund of the Board of Regents to be used by the State University System to support programs of research and development of hurricane loss reduction devices and techniques for residences. Funding for the research and development programs is required to be matched by an equal amount of in-kind services from sources other than the State University System. The State University System is required to consult with the Department of Community Affairs prior to spending any moneys allocated from the HLMCTF.

Beginning on January 1, 2000, the Department of Community Affairs must provide a full report and evaluation of activities each year to the Speaker of the House, the President of the Senate, and the Majority and Minority Leaders of the House and Senate.

At the end of any fiscal year, any funds in the Hurricane Loss Mitigation Clearing Trust Fund remains in the fund and available to carry out the purposes of the trust fund.

The creation of the Hurricane Loss Mitigation Clearing Trust Fund assures that the $10 million will be appropriated from the Cat Fund, thus making it less likely that a line item veto will jeopardize the tax exempt status of the Cat Fund.

As to the possible constitutional issue of trust fund creation posed in Article III, sec. 19(f)(1), Florida Statutes, 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*.

This bill 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 this bill 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.

The bill is designated as the "Bill Williams Residential Safety and Preparedness Act." According to SB 870, Bill Williams is the former president of the Federation of Manufactured Home Owners of Florida, Inc., a consumer advocacy association. Mr. Williams was an advocate for manufactured and mobile home owners around the state. He died September 22, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Insurance, the Department of Community Affairs, and the State University System are required to implement or expand programs in regards to hurricane mitigation and mitigation research.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 215, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Designating the bill as the "Bill Williams Residential Safety and Preparedness Act."

Section 2. Creating s. 215.559; establishing the Hurricane Loss Mitigation Clearing Trust Fund (HLMCTF) under the administration of the Comptroller; requiring funds credited to the HLMCTF to be transferred from the Florida Hurricane Catastrophe Fund (Cat fund); directing the Legislature to annually appropriate moneys from the Cat fund according to the purposes established in the bill; requiring HLMCTF funds to be used to provide funding to local governments, state agencies, and nonprofit organizations to support programs intended to: (1) improve hurricane preparedness; (2) reduce potential losses in the event of a hurricane; (3) provide research on ways to reduce hurricane losses; (4) educate or inform the public on ways to reduce hurricane losses; and (5) assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades; directing the Comptroller to annually transfer Cat fund investment income; providing that 85 percent of the allocation of funds must go to the Department of Community Affairs to be used for programs improving the wind resistance of residences and mobile homes. Of this 85 percent allocated to the Department of Community Affairs, at least 40 percent of the appropriation must be used for mobile homes for the first year of the programs, declining to 30 percent in the second year, and 20 percent in the following years; requiring the Department of Community Affairs to consult with an advisory council appointed by the secretary regarding the development of hurricane loss reduction programs; providing that the advisory council must consist of: (1) a representative from the Department of Insurance, (2) a representative from home builders, (3) a representative from insurance companies, (4) a representative from the Federation of Mobile Home Owners, and (5) a mobile home manufacturer; prohibiting the Department of Community Affairs from supplanting other funding sources of the Department of Community Affairs with money provided to it for hurricane loss reduction purposes; providing that 5 percent of the allocation of funds must go to the Insurance Commissioner's Regulatory Trust Fund, to be used by the Department of Insurance for consumer education, information, and outreach to encourage consumers to take action 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 by in-kind services; prohibiting the Department of Insurance from supplanting other funding sources of the Department Insurance with money provided to it for hurricane loss reduction purposes; providing that 10 percent of the allocation of funds must go to the Operating and Maintenance Trust Fund of the Board of Regents to support research and development programs, with regard to hurricane reduction devices and techniques for residences and mobile homes; requiring that the funding of research and development programs must be matched by at least an equal amount of funds or in-kind services from entities other than the State University System; directing the State University System to consult with the Department of Community Affairs prior to spending these funds; requiring the Department of Community Affairs to submit an annual report and accounting of activities under these provisions to the House and Senate beginning January 2000; and providing that any 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. Amending s. 215.555, Florida Statutes, 1998 Supplement, deleting specified uses of certain Cat fund proceeds transferred to the HLMCTF; transferring, annually, a portion of the Cat fund investment income to the HLMCTF. Specifically, the amount of the transfer must consist of $10 million, plus additional amount such that the total amount transferred equals 35 percent of the investment income of the Cat fund in the prior year; requiring the board to limit the transfer to $10 million 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 would have an adverse impact on rates.”

Section 4. Providing that the bill is effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

SEE III. D.--FISCAL COMMENTS SECTION

1. Non-recurring Effects:

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

4. Total Revenues and Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   N/A

2. Direct Private Sector Benefits:

   To the extent that the purposes of programs funded by the HLMCTF are successful, Florida’s homeowners will benefit. Further, according to the Department of Insurance, the enhancements on windstorm mitigation which homeowners will be able to implement with this $10 million annual appropriation may reduce, over time, the insurance cost for those residential properties which implement mitigation in Florida.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Safer mobile homes produced as a result of this bill may benefit the mobile home industry. Also, the bill's provisions may help keep Florida mortgage insurers viable following a critical hurricane event.

D. FISCAL COMMENTS:

Under the provisions of this bill, the State Board of Administration must 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 must not exceed 35 percent of the amount of investment income in the Cat Fund the previous year. The State Board of Administration limits the transfer of these funds to $10 million if the State Board of Administration finds that the additional appropriation will 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 may result in higher Cat Fund premiums being charged.

IV. <u>CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION</u>:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. <u>COMMENTS</u>:

None.

VI. <u>AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES</u>:

On March 22, 1999, the House Committee on Community Affairs adopted two amendments to HB 975. The amendments are traveling with the bill. An explanation of the amendments follows:

- **Amendment No. 1:** Adds a representative of the Florida Association of Counties to the advisory council; and
- **Amendment No. 2:** Adds that a representative of the Florida Manufactured Housing Association must be a mobile home manufacturer to serve on the advisory council.

VII. <u>SIGNATURES</u>:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Staff Director:
Nayola R. Frazier	Joan Highsmith-Smith

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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