

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: CS/SB 198

SPONSOR: The Committee on Comprehensive Planning, Local and Military Affairs

SUBJECT: Emergency Management

DATE: March 27, 2000

REVISED: 3/29/2000 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Lombardi</u>	<u>Hadi</u>	<u>FP</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute is designed to reduce the deficit of safe hurricane shelter space by:

- appropriating and prioritizing state funds for shelter retrofitting;
- expanding the role and responsibilities of the public schools, universities, local governments, the Department of Management Services (DMS), and private entities in providing facilities to be used as hurricane shelters;
- requiring the Department of Community Affairs (DCA) to adopt a regional, rather than county, approach to sheltering; and
- extending a liability waiver to private property owners that rent their property for use as emergency shelters.

The bill also provides for the continuation of health care services to persons requiring special needs assistance during an emergency or disaster by:

- requiring the Department of Health (DOH) to establish a system to recruit and coordinate, through county health departments, health care practitioners for staffing of special needs shelters, and to compile registries of emergency medical technicians, paramedics and various health care practitioners for disasters and emergencies;
- requiring all home health agencies, nurse registries, and hospices to prepare and maintain a comprehensive emergency management plan;
- requiring state agencies that contract with providers giving care to disabled persons to include emergency and disaster planning provisions in such contracts; and
- appropriating funds to implement these provisions.

Finally, the bill strengthens statutory provisions that prohibit price gouging by public lodging establishments during a declared state of emergency or government-ordered evacuation.

The bill amends ss. 212.559, 235.26, 240.295, 252.35, 252.355, 252.373; 252.38, 252.385, 252.51, 400.497, 400.506, 400.605, 400.6095, 400.610, 408.15, and 509.201, F.S.; creates ss. 381.0303, 400.492, 401.273, and 455.718, F.S., repeals s. 252.855, F.S.; and creates five undesignated sections of law.

II. Present Situation:

Public Hurricane Shelter Capacity

Florida is frequently confronted with major hurricanes and related storms that impact its citizens and visitors. It is estimated that 80 percent of Florida's population live, and many of its visitors stay, within 10 miles of the coast, which is the area most susceptible to the damaging effects of hurricanes. In the event of a major storm, many of these people will have to evacuate to public shelters. If adequate shelters are unavailable, our citizens and visitors may be exposed to unacceptable safety risks.

In the wake of Hurricane Andrew, the 1993 Legislature declared in s. 252.385(1), F.S., its intent to "*not have a deficit of safe public shelter space in any region of the state by 1998 and thereafter.*" The Division of Emergency Management (division) in DCA is required to survey existing schools, community colleges, universities, and other public buildings, to identify the existing shelter inventory.

The division reports that the survey findings are not encouraging. DCA's *1998 Shelter Retrofit Report* states that Florida has a shelter demand of 1,278,646, a shelter capacity of 993,552, for a deficit of 285,094. Furthermore, the division reports that many of the buildings identified by county emergency management authorities appear to be unsuitable as public hurricane evacuation shelters, or indicate greater shelter capacities than actually exist. This is due, in part, to the division's adoption of the American Red Cross Hurricane Evacuation Shelter Selection Guidelines, which were used by the division's engineering staff and a contract engineering firm to conduct 806 studies on the estimated 3,043 buildings in the identified state inventory. The division concludes that these studies "have consistently found structural defects and hazardous conditions that may affect their suitability as high wind shelters."

DCA's *1999 Shelter Retrofit Report* states that for those counties where shelter studies have been conducted, only 2 percent of the listed capacity complied with the guidelines. However, this percentage improves to 36 percent if minor retrofitting, such as installation of window shutters, or other mitigation efforts are taken. Consequently, many counties that currently indicate shelter capacity "surpluses listed for their shelter inventories, may in reality have severe deficits."

DOE Facilities

Section 235.26(9), F.S., requires the Department of Education (DOE), in consultation with county and state emergency management offices, to amend the State Uniform Building Code for Public Educational Facilities Construction to incorporate public shelter design criteria into the Uniform Building Code. These new standards were incorporated into Section 5.4(15) of the State Requirements for Educational Facilities (SREF). The SREF "Public Shelter Design Criteria" became effective as of April 28, 1997, and unless exempted, is a requirement for all new school construction projects (K - 12 and Community Colleges) in counties with an identified deficit of shelter space.

As of August, 1999, DOE reports that 29 schools meeting SREF standards have been constructed, and 59 schools and 7 community college buildings are under construction or in the planning stages. DCA estimates that inclusion of these standards into the building code add from two to five percent to the total construction cost of a new educational facility.

However, not all new public educational facilities are built to SREF standards. Section 235.26(9)(a), F.S., requires new facilities to be built in compliance with SREF unless the facility, or a part of the facility, is exempted:

- due to its location, size, or other characteristics, as determined by the applicable board with the concurrence of the applicable local emergency management agency or DCA;
- if the facility is located or proposed to be located in an identified category 1, 2, or 3 evacuation zone (low-lying storm surge evacuation areas); or
- if there is already an educational facility built to incorporated public shelter criteria within a 3-mile radius of the new facility.

DOE recognizes the need for public shelters and has contracted for the design of a prototype elementary school which can be constructed to house 250 to 500 students. These facilities are being designed as full hurricane shelters pursuant to SREF. The plans for these schools will be available for use by school districts in 2000.

BOR Facilities

Section 240.295, F.S., requires the Board of Regents (BOR) to identify campus facilities suitable for public shelters for their students, faculty, employees, and other persons. The BOR must make such identifications in consultation with local and state emergency management agencies. Campus buildings for which a design contract has been entered into after July 1, 1994, must be constructed according to public shelter standards unless exempted by the BOR and the local emergency management agency or DCA. Use of BOR facilities for the public at large is discretionary, pursuant to an agreement with local emergency management agencies.

State Leases of Private Property

DMS is responsible for the procurement of buildings used for state offices. Section 255.249, F.S., authorizes the Division of Facilities Management to adopt rules providing acceptable terms for inclusion in lease agreements. Currently, there is no requirement that DMS incorporate provisions for use of suitable leased space as public hurricane evacuation shelters in its lease agreements for state agencies.

Public Shelter: Liability

Section 252.51, F.S., extends a waiver of liability to public or private persons or organizations, owning property, who voluntarily and without compensation allow a local emergency management agency to use their property as an emergency shelter. An action of gross negligence, willful and wanton misconduct by such persons invalidates the liability waiver.

Sovereign immunity

Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. The doctrine originated in common law, providing the king and his treasury immunity from suit by his subjects in his own courts. In Florida, Section 13, Article X of

the State Constitution provides that provision be made by general law for bringing suit against the state. Section 768.28(5), F.S., waives sovereign immunity for liability in tort claims to the same extent as a private individual under similar circumstances. Governmental immunity is waived for most government activities where there has been an underlying common law duty of care.

Trianon Park Condominium Ass'n, Inc. v. City of Hialeah, 468 So.2d 912 (Fla. 1985). Liability does not include punitive damages or any interest for the period before the judgment.

Notwithstanding the waiver of sovereign immunity, the law caps liability at \$100,000 per person, and \$200,000 per incident. Any amounts in excess of these caps may be paid only by further act of the Legislature through the Claims Bills process. The state or an agency or subdivision may settle a claim or pay a judgment rendered against it within the limits of its insurance coverage. Such coverage neither waives the defense of sovereign immunity, nor serves to increase the limits of liability over the statutory caps of \$100,000 and \$200,000.

While s. 768.28, F.S., demonstrates an intent to waive sovereign immunity on a broad basis, "discretionary functions" remain immune from tort liability. Florida courts define such functions as planning or policy level functions, as opposed to operational level functions that implement policy. *Department of Health and Rehabilitative Services v. Yamuni*, 529 So.2d 258 (Fla. 1988) and *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010 (Fla. 1979). However, regulatory activities such as law enforcement or building code enforcement (police power activities) generally fall into this "discretionary" category, provided there has never been a "duty of care" recognized in common law. *Trianon Park Condominium Ass'n, Inc. v. City of Hialeah*, 468 So.2d 912 (Fla. 1985).

Funding for Public Hurricane Shelter Retrofitting

In an effort to reduce the statewide shelter deficit, s. 252.385(3), F.S., requires DCA to prepare an annual list of facilities recommended to be retrofitted using state funds. The goal is to retrofit all identified facilities by 2003. The 1999 *Shelter Retrofit Report* states that the division reviewed a total of 218 project proposals submitted by county emergency management agencies in cooperation with local American Red Cross Chapters, School Boards, and other organizations involved in hurricane sheltering activities. After an analysis of the projects, the division prepared a list of 184 projects for retrofitting that, if funded, it estimates will reduce the hurricane evacuation shelter deficit by 88,679 spaces. The total cost of these projects is estimated to be \$17,882,467.

While the Legislature has never directly funded these annually recommended projects, it has developed a competitive grant program that is available to provide limited funding for shelter retrofitting projects. Since FY 1993/94, the Legislature has imposed an annual \$2 surcharge on every homeowner's, mobile homeowner's, tenant homeowner's, and condominium unit owner's insurance policy and an annual \$4 surcharge on every commercial fire, commercial multiple peril, and business owner's property insurance policy. [s. 252.372, F.S.] Proceeds are deposited in the Emergency Management Preparedness and Assistance Trust Fund, and are used to provide funds for emergency management, preparedness, and assistance. [s. 252.373, F.S.]

In FY 1998/99, these surcharges amounted to an estimated \$13.6 million. Eighty percent is allocated to implement and administer state and local emergency management programs and to provide for state relief assistance for nonfederally declared disasters. The remaining twenty percent of the fund proceeds are required to be made available as competitive grants to state or

regional agencies, local governments, and private organizations to implement projects that will further state and local emergency management objectives, which may include retrofitting and equipping shelter space.

These competitive grants are distributed by DCA through:

- the Emergency Management Competitive Grant Program, with awards capped at \$300,000 per project; and the
- the Municipal Competitive Grant Program, with awards capped at \$50,000.

DCA staff report that applications to grants awarded run 10 to 1. DCA estimates that between FY 1993/94 and 1998/99, \$1.1 million in grants were awarded for shelter retrofitting, \$1.5 million for critical facility retrofitting, and \$.6 million for shelter supplies and funding for shelter studies.

In addition, the FY 1999/00 State Budget allocated \$3,265,000 from the Florida Hurricane Catastrophe Fund for public schools designated as hurricane shelters, to provide for reinforcement and upgrade of existing windows to approved FEMA and DCA hurricane barrier standards. Proviso language stipulated that \$1 million of this appropriation be used for 10 schools in Osceola County. However, the Governor vetoed this proviso language, thereby reducing the total appropriation to \$2,265,000. (The Governor also vetoed \$1.2 million in CAT Fund money appropriated for underground utility demonstration projects, which brought total CAT Fund appropriation vetoes to \$2.2 million.)

The Cat Fund

The Florida Hurricane Catastrophe Fund (Cat Fund), pursuant to s. 215.555, F.S., was created by the Legislature in 1993 in response to Hurricane Andrew. The Cat Fund is placed within the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for excess losses due to hurricanes. Two of the factors the Internal Revenue Service found important in granting the tax-exempt status were the Cat Fund's broad base of participation and the statutory requirement that the Cat Fund pay out \$10 million annually for the mitigation of hurricane losses.

Section 215.559, F.S., established the Hurricane Loss Mitigation Program. This section requires the Legislature to annually appropriate \$7 million of the \$10 million in CAT fund moneys for hurricane mitigation to DCA for the following purposes:

- to improve the wind resistance of residences and mobile homes;
- cooperative programs with local governments and the Federal Government; and
- and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

Use of the remaining \$3 million (or more, as the Legislature appropriates) is unspecified.

County Emergency Management Directors

Chapter 252, F.S., addresses emergency management for the state of Florida. Section 252.38, F.S., provides that each board of county commissioners must appoint the director of the emergency management agency and set the annual salary of the director. Directors serve at the

pleasure of the boards of county commissioners, subject to their direction and control, in conformance with applicable resolutions, ordinances, and laws.

However, the current practice among many counties include:

- appointment of a county constitutional officer or an employee of a county constitutional officer such as a sheriff or sheriff's deputy, respectively; or
- allowing the county manager, county administrator, chief administrative officer, or some other intermediate county agency or officer to appoint the emergency management agency director.

In these cases, the board of county commissioners are placing the director under the administrative supervision and control of some intermediate county agency or official in what appears to be contravention to s. 252.38, F.S.

The Attorney General issued an April 8, 1976, opinion holding that the director of a county emergency management agency may not be subordinated to an intermediate county agency or official. In essence, only the board of county commissioners is statutorily authorized to appoint and supervise the director of a county emergency management agency. Applying the fundamental rule of statutory construction that statutes should be given their plain and obvious meaning, the opinion states in part:

I construe s. [252.38(1)(b)], as plainly providing that no public official, agency, or body other than the county governing body and the Division of [Emergency Management] of the Department of Community Affairs shall have direction and control over the director of a county's disaster preparedness agency. Thus the county governing body may not place the director under the administrative supervision and control of some intermediate county agency or official. This construction appears to be consistent with the declared legislative purpose "to provide effective and orderly governmental control and coordination of emergency operations in disasters and emergencies," [252.38(1)(a)].

The opinion further states that this section operates as an exception to s. 125.73, F.S., which requires each county to appoint a county administrator as the administrative head of the county. The county administrator is responsible for the administration of all departments of the county government. The opinion reasons that this section concerns the general subject of county administration, and s. 252.38, F.S., relates particularly with administration of a county disaster preparedness agency. Thus, "the statute relating to the particular part of the general subject will operate as an exception to, or qualification of, the general terms of the more comprehensive statute to the extent of any repugnancy between the two."

According to the division, more counties complied with the provisions of s. 252.38, F.S., in 1976 when the opinion was issued than currently. The division surmises that counties have experienced significant growth since 1976, thus, making it necessary to delegate important responsibilities to other intermediate agencies or officials, or county constitutional officers or their employees to achieve efficiency, order, and control at the local government level. The division reports that there are six counties with emergency management personnel in the Sheriff's Office. However, some representatives from the Florida Association of Sheriffs speculate that the figure is as high as 17.

DCA Rules

Section 252.35, F.S., sets forth DCA's Division of Emergency Management's powers and responsibilities. The division is required, in part, to prepare a state comprehensive emergency management plan. Paragraph (2)(u) of s. 252.35, F.S., authorizes the division to adopt plans and rules necessary to carry out the provisions of Parts I and II of chapter 252, F.S. [s. 252.31 - 252.91, F.S.]

Emergency Planning and Community Right To Know Act

Section 252.855, F.S. is designed to alleviate a dual reporting burden for retail petroleum facilities which are regulated by the Department of Environmental Protection's (DEP) Storage Tank Program and which report to DCA under the Emergency Planning and Community Right To Know Act (EPCRA). The section requires consolidated EPCRA reporting forms for DEP and DCA.

On February 11, 1999, the United States Environmental Protection Agency (EPA) published its final rule which dramatically increased the EPCRA reporting thresholds for gasoline and diesel fuel at retail facilities. In essence, this new federal threshold eliminates the EPCRA reporting obligation for the retail petroleum facilities. Without this obligation, there is no need for the consolidated reporting program by the two agencies pursuant to s. 252.855, F.S. As such, the division recommends a repeal of this section.

Special Needs Shelters

Part 1 of chapter 252, F.S., contains the State Emergency Management Act. Section 252.35, F.S., requires the division to be responsible for maintaining a comprehensive statewide program of emergency management. The division must coordinate its efforts with the federal government, other departments and agencies of the state government, the various local governments, and private agencies that have a role in emergency management.

The statewide plan must include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private, and nonprofit sectors. One component of the plan must include strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel.

Pursuant to s. 252.355, F.S., each local emergency management agency in the state must maintain a registry of disabled persons located within the jurisdiction of the local agency. The registry must be updated annually. All appropriate agencies and community-based service providers, including home health care providers, must assist emergency management agencies by collecting registration information for people with special needs as part of program intake processes.

Currently, hospital and nursing homes are required to have disaster plans to provide continuous care to their patients during emergencies. Florida law does not require home health agencies, nurse registries, or hospices to prepare disaster plans, nor does it require them to provide continuous care during emergencies.

Price Gouging During Declared Emergencies

Section 501.160, F.S., prohibits persons from renting or selling any essential commodity at an unconscionable price within an area in which a state of emergency has been declared. Such commodities include supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. It is also unlawful to impose unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a declared state of emergency. A price is “unconscionable” if the amount charged represents a “gross disparity” between the price of the commodity or rental and the average price of that commodity or rental during the 30 days immediately prior to the declaration of a state of emergency. Section 501.164, F.S., authorizes the court to impose a civil penalty of not more than \$1,000 per violation, not to exceed \$25,000 for any 24 hour period, against any person who violates 50.160, F.S.

Representatives of the Florida Department of Business and Professional Regulation (DBPR) report that they handled over 450 complaints against hotels and motels for price gouging during Hurricane Floyd. While the department has, to date, resolved approximately 440 of these complaints, they note that clearer enforcement authority is necessary to both discourage price gouging and to expedite prosecution when it has occurred.

III. Effect of Proposed Changes:

Section 1 amends s. 215.559, F.S., to change the distribution formula for the Hurricane Loss Mitigation Program to require \$3 million of the \$10 million or more annually appropriated for hurricane mitigation be used for shelter retrofitting.

Section 2 amends s. 235.26(9), F.S., to modify the provision that exempts school districts from incorporating public shelter construction criteria into new school buildings. This section deletes the provision that exempts facilities from the public shelter construction criteria if there is currently an educational facility built that incorporated this criteria within a 3-mile radius of the new facility. However, school districts are not required to incorporate public shelter criteria into construction of educational facilities if the regional planning council region in which the county is located does not have a hurricane evacuation shelter deficit, as determined by DCA.

Paragraph (9)(b) is amended to require DCA, in their annual reports to the Legislature, to identify existing shelters by regional planning council region, as opposed to identification by county.

Section 3 amends s. 240.295, F.S., to:

- redesignate “public shelters” as “public hurricane evacuation shelters”;
- require the BOR to annually submit to the Governor and Legislature a 5-year capital improvements program that identifies new or retrofitted facilities that incorporate enhanced hurricane resistance standards and that can be used as public hurricane shelters;
- specify that “enhanced hurricane resistance standards” include fixed passive protection for window and door applications that provide mitigation protection, security protection with egress and energy efficiencies that meet standards required in the 130 mile per hour wind zone areas;
- require the BOR to submit a summary of proposed facility retrofit projects to DCA;

- remove the stipulation that Florida's University System provide shelter only for their students, faculty, and employees, thereby making their shelter space available to the general public to the same extent that school districts and community colleges currently do;
- delete an obsolete reporting requirement; and
- change the standard for a BOR facility to be exempt from the public shelter standards by requiring that the regional planning council region in which the campus is located, rather than only the campus, have sufficient shelter space; however, only facilities specifically "identified by the board, with the concurrence of the local emergency management agency" or DCA to be appropriate for use as a shelter, are required to be constructed in accordance with shelter standards.

Section 4 amends s. 252.35(2)(a), F.S., to require DCA to adopt, by rule, their state comprehensive emergency management plan. Paragraph (2)(u) is amended to authorize DCA to adopt rules to administer and distribute federal financial assistance.

Section 5 amends s. 252.38, F.S., to authorize county constitutional officers, or their employees, be designated as the emergency management director, subject to prior notification to DCA. In addition, the chief administrative officer of the county is authorized to appoint the county emergency management director.

Section 6 amends s. 252.385, F.S., to:

- redesignate "public shelters" as "public hurricane evacuation shelters";
- authorize the division to survey private facilities for inclusion, with the owners' written permission, in the department's list of public hurricane evacuation shelters;
- include district school boards and community college boards in the list of educational entities responsible for coordinating and implementing the survey of shelters for the state's public education facilities;
- clarify that this survey coordination is to be either with the Division of Emergency Management or the local emergency management agency;
- require that state funds "be maximized" when distributed for shelter retrofitting projects;
- adopt a regional, as opposed to county, approach to targeting the distribution of funds for shelter retrofitting;
- change the deadline to complete the retrofitting of facilities in regions with public shelter deficits from 1998 to 2003;
- change the deadline to complete the retrofitting of all recommended facilities from 2003 to 2008;
- clarify that owners or lessees of a shelter included on the retrofit list are not required to make any of the recommended improvements;
- require public facilities suitable for use as public hurricane evacuation shelters, excluding state or local government owned or leased hospitals or nursing homes, be available at the request of the local emergency management agencies;
- require DMS to incorporate provisions for use of suitable leased space as public hurricane evacuation shelters in its lease agreements for state agencies; and
- require DMS to identify the extent to which their facilities have public shelter space, and to submit to DCA a summary of proposed retrofit projects.

Section 7 amends s. 252.373, F.S., to require that shelter retrofit projects be given priority when Emergency Management, Preparedness, and Assistance Trust Fund grant and loan funds are distributed.

Section 8 amends s. 252.51, F.S., to extend a liability waiver to property owners that rent their property for use as emergency shelters. However, these property owners are liable for actions of gross negligence, as are persons providing facilities for no compensation under current law. Where actions of simple negligence result in death or injury to persons in these facilities, whether rented or provided for free, the property owners are deemed to be agents of the governmental entity contracting for the facility, with the contracting entity liable for damages to the extent provided under s. 768.28, F.S., which is the statutory waiver of sovereign immunity.

Section 9 requires \$2.2 million from the Florida Hurricane Catastrophe Trust Fund be appropriated to retrofit hurricane evacuation shelter facilities. In addition, \$3 million from the Florida Hurricane Catastrophe Trust Fund is appropriated to retrofit hurricane evacuation shelter facilities.

Section 10 requires \$3.3 million in general revenue funds be appropriated to retrofit hurricane shelter facilities.

Section 11 grants DCA authority to use \$5 million in federal mitigation funds for shelter retrofit projects.

Section 12 repeals s. 252.855, F.S., an obsolete provision relating to reporting and fee collection by DEP and DCA.

Section 13 amends s. 252.355, F.S., to require local emergency management agencies to maintain a registry of persons with “special needs,” which includes persons with mental or sensory disabilities, rather than a registry of disabled persons. The Department of Labor and Employment Security (DLES), as well as the departments of Children and Family Services (DCF), Health (DOH), and Elderly Affairs (DEA) as required in current law, is required to assist the local emergency management agencies with identifying persons to be included in the registry.

Section 14 creates s. 381.0303, F.S., to establish a system to recruit health care practitioners to staff special needs shelters in the times of emergencies or disasters. This section contains the following requirements:

- If funds are appropriated, DOH, through the county health departments, is responsible for coordinating local medical and health care providers, the American Red Cross, and other interested parties, in developing a plan, which is in conformance with the local comprehensive emergency management plan, for staffing and medical management of special needs shelters. The county health department is responsible for the recruiting of health care practitioners, while the county health department and the local emergency management agency must jointly determine who has responsibility for medical supervision in a special needs shelter. The local emergency management agencies are responsible for the designation and operation of special needs shelters.

- DOH is responsible for the reimbursement, if funds are available, of health care practitioners providing services in special needs shelters, or other locations, during times of disaster. Guidelines for reimbursement are specified.
- DOH is authorized to use the health care practitioner registry (created in section 14) and the emergency medical technician and paramedic registry (created in section 21) to staff special needs shelters or disaster medical assistance teams.
- DOH is authorized to establish a special needs shelter interagency committee to resolve problems related to special needs shelters and to monitor the planning and operation of special needs shelters. This provision establishes the purpose, duties, composition, responsibilities, and meeting guidelines of the committee. DOH is authorized to adopt rules necessary to implement the provisions relating to the committee.

Section 15 creates s. 400.492, F.S., to require home health agencies to prepare and maintain a comprehensive emergency management plan that is consistent with national accreditation standards and the local special needs plan. The plan must be updated annually and must provide for continuing services during an emergency. Plan components are specified. Patient records for patients listed in DOH's registry of persons with special needs must include a description of how care or services will be continued in the event of an emergency. The home health agency must discuss the emergency provision with the patient and the patient's care givers. Each home health agency must maintain a current prioritized list of patients who need continued services during an emergency. Home health agencies are released from health care responsibility in emergency situations that are beyond their control and that make it impossible to provide services. Home health agencies are allowed to provide services in a special needs shelter located in any county.

Section 16 amends s. 400.497, F.S., to provide that the Agency for Health Care Administration's (AHCA) rules must provide reasonable and fair minimum standards relating to the:

- scope of home health services to be provided, particularly during emergency evacuation and sheltering, and
- preparation of a comprehensive emergency management plan by the home health service, with minimum criteria for such a plan and plan updates; the plan must provide for the maintenance of patient-specific medication lists that can accompany transported patients; the plan is subject to review and approval by the county health department; ACHA, the local district office of DCF, the local chapter of the American Red Cross or other lead sheltering agency and the local emergency management agency must be given an opportunity to review the plan; county health department review must be completed within 60 days after receipt of the plan; DOH must complete its review within 90 days after receipt of the plan.
- DOH, in consultation with local entities, is required to review the comprehensive emergency management plans of home health agencies operating in more than one county.

Exemptions to the plan requirements are specified.

Section 17 amends s. 400.506, F.S., to direct nurse registries to assist at-risk clients with special needs registration with the appropriate local emergency management agency. In addition, nurse registries must prepare and maintain a comprehensive emergency management plan. The plan

must be updated annually and must provide for continuing nursing services during an emergency that interrupts patient care or services in private residences.

Records of patients listed in the registry must include a description of how care will be continued in an emergency. The registry must maintain a current prioritized list of patients who need services during an emergency, and must provide it to the local emergency management agencies, upon request. The registries are released from health care responsibility in emergency situations that are beyond their control and that make it impossible to provide services.

The nurse registries' comprehensive emergency plan is subject to review and approval by the county health department, with review by other affected agencies.

ACHA is required to adopt rules to establish minimum criteria for these plans and plan updates, with the concurrency of DOH and in consultation with DCA.

Section 18 amends s. 400.605, F.S., to require DEA to establish minimum standards, by rule, in consultation with DOH and DCA, for components of a comprehensive emergency management plan for hospices.

Section 19 amends s. 400.6095, F.S., to require a description of how care and services will be provided in the event of an emergency to be included on a hospice patient's medical record.

Section 20 amends s. 400.610, F.S., to direct the governing body of a hospice to prepare and maintain a comprehensive emergency management plan that provides for continuing hospice services in the event of an emergency which is consistent with local special needs plans. The plan must include provisions for ensuring continuing care to hospice patients who go to special needs shelters. The plan is subject to review by the local emergency management agency. The county health department must review the plan within 60 days. If a hospice operates in more than one county, DOH must review the plan. The review must be completed within 90 days.

Section 21 creates s. 401.273, F.S., to establish an emergency medical technician and paramedic registry. DOH is responsible for gathering information for the registry from emergency medical technicians and paramedics certification and recertification forms, and maintaining the names of those available to serve.

Section 22 amends s. 408.15, F.S., to authorize AHCA to establish, in coordination with DOH, uniform standards of care for special needs units or shelters during times of emergency or major disaster.

Section 23 creates s. 455.718, F.S., to authorize DOH to establish and maintain a registry of health care practitioners who are willing to assist with special needs persons during emergencies or disasters. DOH is authorized to include a question on licensure or certification forms for various medical personnel to ascertain if such practitioners will be available to assist DOH in the event of an emergency or disaster. DOH is required to include the names of those practitioners who answer affirmatively in a health care practitioner registry for disasters and emergencies.

Section 24 requires state agencies that contract with providers giving care to disabled persons to include emergency and disaster planning provisions in such contracts. These provisions include:

- designation of an emergency coordinating officer;
- a procedure for contacting all at-risk provider clients, on a priority basis, prior to and immediately following an emergency or disaster;
- a procedure to help at-risk clients register with the special needs registry of the local emergency management agency;
- a procedure to dispatch the emergency coordinating officer or other staff members to special needs shelters to assist clients with special needs, if necessary; and
- a procedure for providing the essential services the organization currently provides to special needs clients in preparation for, and during and following, a disaster.

Section 25 appropriates \$3.4 million from the General Revenue Fund to various specified state agencies to implement the special needs assistance provisions of the bill. The DOH will receive \$3.12 million and DCF, DEA, AHCA, and DCA will each receive \$58,898 in the first year of operation.

Section 26 amends s. 509.201, F.S., to prohibit price gouging by public lodging establishments during a declared state of emergency or government-ordered evacuation. This change requires such establishments to suspend their approved posted rates and impose emergency rates, which may not exceed by more than 10% the average daily rate charged for the seven days preceding the date of the declared state of emergency. Establishments are also prohibited from imposing minimum stays on evacuees.

Enforcement of these provisions are preempted to DBPR, and violators are punishable as provided in s. 509.261, F.S. Such punishments may include fines not to exceed \$1000 per offense, mandatory attendance at an educational program, and suspension, revocation, or refusal of a license.

Section 27 provides an effective date of July 1, 2000 for sections 1 - 12, and section 26, and an effective date of October 1, 2000 for sections 13 - 25.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The "CAT Fund" was created in 1993 in response to the disruption of the property insurance market following Hurricane Andrew in 1992. The fund is a state reinsurance fund to

reimburse insurers for a portion of their hurricane losses in the state. The CAT Fund provides additional reinsurance capacity, thereby increasing the amount of property insurance that insurers are able to write and enabling insurers to pay all claims in full in the event of a hurricane. [s. 215.555(1), F.S.]

The law expressly provides that revenues received into the CAT Fund be exempt from federal taxation. To maintain this tax exempt status, the Internal Revenue Service requires the Legislature to annually appropriate from the fund no less than \$10 million but no more than 35 percent of investment income from the prior year for hurricane mitigation. Authorized mitigation projects include funding of local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve hurricane preparedness, reduce potential losses in the event of a hurricane, provide research into hurricane loss reduction, educate or inform the public as to the means to reduce hurricane losses, assist the public in determining the appropriateness of structural upgrades or in the financing of structural upgrades, or protect local infrastructure from potential damage from a hurricane.

The State Board of Administration staff, administrators of the fund, indicate that appropriating CAT Funds for hurricane shelter retrofitting is an appropriate and authorized use of fund proceeds, and will not jeopardize the tax status of the fund.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill to extend a liability waiver to property owners that rent their property for use as emergency shelters. This may encourage such property owners to make their facilities available for use as public shelters.

Home health agencies, nurse registries, and hospices will be required to prepare and maintain comprehensive emergency management plans. According to DOH, the cost to provide a plan for each home health agency, hospice, and nurse registry varies depending upon the size of the organization. Those agencies that are currently accredited by the Joint Commission for the Accreditation of Health Care Organizations require minimal additional expenditures, if any, to carry out this responsibility. Additional costs will be incurred by some organizations in providing continuous care during emergencies.

C. Government Sector Impact:

The bill appropriates \$13.5 million from various state and federal trust funds within the Department of Community Affairs to retrofit emergency shelter space. The funds will be made available through specific appropriation No. 1395A in the General Appropriations Act (GAA) for FY 2000-01.

The bill also appropriates \$3.4 million from the General Revenue Fund to implement the special needs assistance provisions of the bill. Neither the House nor Senate has identified funds in the GAA for this purpose. The funds are to be distributed to various specified state agencies: the DOH receiving \$3.12 million and DCF, DEA, AHCA, and DCA each receiving \$58,898 in the first year of implementation.

DOH has the statewide coordination responsibilities, through its county health departments, to mobilize certain health care professionals to provide services to special needs shelters during emergency events. Funding for the department includes 2 FTEs at headquarters and 57 FTEs in field offices throughout the state. The appropriation would also provide for staff training and travel reimbursement. The department must also maintain two additional health care provider registries. Separate appropriations for DCF, DCA, DEA, and AHCA will provide 1 additional FTE and associated OCO expenses for each agency.

In subsequent years, a recurring appropriation from the general revenue fund of approximately \$3.8 million will be required to continue the program. Although the Governor's budget recommendation initially included \$600,000 in funding to implement a pilot program to address the special needs assistance issue on a smaller scale, neither the House nor Senate have identified funds in the GAA for this specific purpose.

Modifying the provision that exempts school districts from incorporating public shelter construction criteria into new school buildings is likely to result in adding to construction costs of new public schools. DCA estimates that inclusion of these standards into the construction requirements add from two to five percent to the total construction cost of a new educational facility.

The State University System must assess its campus facilities for suitable public hurricane evacuation shelter use for the general public. Unless exempted, the BOR may need additional funding to incorporate enhanced hurricane resistance standards into new building projects.

The district school boards and the community college boards of trustees are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the Division of Emergency Management or the local emergency management agency. Because these entities are currently participating in the survey process, the fiscal impact should be minimal.

Public entities may incur costs related to making their facilities available as public hurricane evacuation shelter.

DMS will be responsible for incorporating provisions for use of suitable leased space as public hurricane evacuation shelters in its lease agreements. In addition, DMS is required to identify the extent to which their facilities have public shelter space, and to submit to DCA a summary of proposed retrofit projects. The fiscal effect to DMS should be minimal.

The bill extends a liability waiver to property owners that rent their property for use as emergency shelters. This should help reduce the deficit of safe hurricane shelter space

throughout the state and mitigate unnecessary costs for shelter renovation, acquisition, and construction.

State agencies who contract with providers giving care to disabled persons must include specific emergency and disaster planning provisions in such contracts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by the Fiscal Policy Committee:

The amendment eliminates the specific appropriation and associated implementing provisions for special needs assistance in the bill. The amendment also specifies that organizations providing emergency shelter space for compensation shall be deemed an instrumentality of the State and granted sovereign immunity in accordance with the provisions of s. 768.28, F.S.