

for amounts vetoed by the Governor), but then appropriated \$30 million for FY 2001-02 and \$20 million for FY 2002-03 (\$19.075 million, net of vetoed amount), for such purposes. As currently structured, these appropriation amounts are added to the premium that the SBA charges insurers who, in turn, may recoup such amounts in the premiums they charge to residential property insurance policyholders.

This Senate Joint Resolution creates Section 20 of Article X of the State Constitution.

II. Present Situation:

Florida Hurricane Catastrophe Fund

After Hurricane Andrew, in a Special Session in November 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF or “fund”) to provide a mandatory form of reinsurance for residential property insurers in the state.¹ The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for excess losses due to hurricanes.

The law limits the obligations of the FHCF to its claims-paying capacity, not to exceed \$11 billion in any one year. The \$11 billion limit is increased once the claims-paying capacity of the fund for a subsequent year reaches \$11 billion (i.e., \$22 billion for both years combined). Each insurer must pay its first-dollar residential hurricane claims up to a “retention” or deductible, which totals about \$4 billion for all insurers combined for 2002, pursuant to a statutory formula. Each insurer must annually elect coverage from the fund to be reimbursed at 45 percent, 75 percent, or 90 percent of the insurer’s residential hurricane losses above its retention.

The SBA is required to enter into a reimbursement contract with each residential property insurer, and to establish the premiums that insurers must pay for their coverage from the fund. In doing so, the SBA must select an independent consultant to develop a formula for determining the actuarially indicated premium. Hurricane loss projection models found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology must be used by the FHCF in establishing its premiums.² The annual premium charged to insurers generally represents the average annual expected hurricane loss to be paid by the fund, plus annual administrative expenses of the SBA in operating the fund, plus annual legislative appropriations made from the fund (explained below), the total of which is then discounted to present value based on anticipated investment income.

If the FHCF does not have a sufficient fund balance to pay its obligations to insurers in any given year, it may issue revenue bonds or incur other debt, supported by an assessment against each insurer writing property and casualty business in the state of up to 4 percent of premiums written on such business, except workers’ compensation.³ If necessary to meet its obligations for

¹ Ch. 93-409, L.O.F.; s. 215.555, F.S.

² S. 627.0628(3)(b), F.S.

³ S. 215.555(6)(a)3., F.S. The maximum assessment is 2 percent of gross direct written premium for the prior year, except that, if the Governor has declared a state of emergency under s. 252.36, F.S., due to the occurrence of a “covered event” (hurricane), the amount of the assessment for the contract year may be increased to an amount not exceeding 4 percent of such premium.

multiple-year hurricanes, an additional 2 percent assessment (plus any unused portion of the 4 percent assessment) may be imposed, so that the total assessment levied in any one year may not exceed 6 percent. Insurers are permitted to recoup assessments from their policyholders in higher premiums.⁴

Insurance company premiums for FHCF coverage have averaged \$451.6 million annually, for all insurers combined, from 1995 through 2002. The fund earns investment income, expends funds for administration, and has paid, to date, relatively small reimbursements to insurers (\$13.1 million in 1995 due to Hurricanes Erin and Opal). The fund is authorized to buy private reinsurance, but to date, the SBA has elected not to do so. The estimated fund balance for December 31, 2002 was \$4.892 billion. This fund balance is expected to increase to \$5.52 billion by year-end 2003, after accounting for 2003 premium income, investment income, and administrative expenses. If hurricane losses in 2003 require the fund to pay the \$11 billion limit in annual reimbursement, the SBA currently estimates that this would require a \$5.48 billion bond issue (plus the \$5.52 billion fund balance), supported by an estimated 1.78 percent assessment on property and casualty insurers, based on current interest rate assumptions.

The premiums that insurers are required to pay the FHCF are significantly lower than comparable levels of reinsurance in the private market. As such, the FHCF acts to lower premiums for residential property insurance as well as to expand reinsurance capacity which enables a greater amount of insurance to be written in the state.

Moneys in the FHCF may not be expended, loaned, or appropriated except to pay obligations of the fund arising out of reimbursement contracts, payment of debt service on revenue bonds, costs of mitigation programs, costs of procuring reinsurance, and costs of administration of the fund.⁵ The SBA must invest the moneys in the fund pursuant to the same laws that generally apply to investment of funds by the SBA under s. 215.44-215.52, F.S.⁶ In practice, the SBA has made relatively low-risk, and highly liquid, fixed maturity investments for the FHCF, due to the need to timely reimburse insurers for hurricane losses.

Hurricane Loss Mitigation Funding

The law directs the Legislature each fiscal year, beginning in fiscal year 1997-1998, to appropriate from the investment income of the FHCF 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 hurricane loss mitigation programs intended to:

- 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;

⁴ S. 215.555(6)(a)3., F.S. This provision states that any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied shall be deemed approved when made, subject to the authority of the Department of Insurance to require actuarial justification as to the adequacy of any rate at any time.

⁵ S. 215.555(3), F.S.

⁶ S. 215.555(3), F.S.

- 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.⁷

These hurricane loss mitigation provisions were enacted in the 1995 act containing provisions determined by the Internal Revenue Service to be necessary in order for the FHCF to be an integral part of state government and not be taxable by the federal government.⁸ One of the changes was an expansion of the moneys available for a wider range of hurricane loss mitigation projects. The 1995 act required the minimum annual \$10 million appropriation, capped at 35 percent of investment income (a change from the prior law that allowed up to 2 percent of premium income to be used), and the act broadened the hurricane loss mitigation purposes.

Legislation in 1999 created the Hurricane Loss Mitigation Program and required that the \$10 million that must be appropriated from the FHCF for loss mitigation be appropriated to the Department of Community Affairs for specified purposes.⁹ As currently required, \$7 million must be used for programs to improve the wind resistance of residences and mobile homes and \$3 million must be used to retrofit existing facilities used as public hurricane shelters. The law further directs that 40 percent of the \$7 million (\$2.8 million) be used to inspect and improve tiedowns for mobile homes and that 10 percent (\$700,000) be allocated to the State University System dedicated to hurricane research. This section is scheduled for repeal on June 30, 2006.¹⁰

History of Mitigation Funding; Impact on Premiums

The Legislature was first required to appropriate a minimum of \$10 million in hurricane loss mitigation funds from the FHCF for the 1997-98 fiscal year. The following chart shows the annual appropriations made by the Legislature and the amounts vetoed by the Governor, since that time:

FHCF Hurricane Mitigation Funding		
<u>FY</u>	<u>Total Appropriated by Fla. Legislature</u>	<u>Vetoed by Governor</u>
97-98	\$10,000,000	\$2,822,400
98-99	\$12,500,000	\$0
99-00	\$10,300,000	\$2,200,000
00-01	\$12,200,000	\$0
01-02	\$30,000,000 ¹¹	\$0
02-03	\$20,002,909 ¹²	\$927,600

⁷ S. 215.555(7)(c), F.S.

⁸ Ch. 95-1, L.O.F.

⁹ Ch. 99-305, L.O.F.

¹⁰ S. 215.559, F.S.

¹¹ The 2001-02 General Appropriations Act (GAA) provided \$10 million to the Department of Community Affairs, of which \$3 million was provided to the Division of Emergency Management in line item 1543 for hurricane loss mitigation programs, and \$7 million was provided to the Division of Housing and Community Development in line items 1605, 1606, and 1607A for hurricane loss mitigation programs. In addition, the GAA appropriated \$20 million to the Department of Environmental Protection in line item 1747A, to be provided to the South Florida Water Management District for storm water/flood mitigation projects in the counties of Palm Beach, Broward and Miami-Dade.

Even though the law allows an appropriation for hurricane loss mitigation programs in an amount up to 35 percent of investment income for the prior fiscal year, the law further provides that moneys in excess of \$10 million are not available for appropriation if the SBA finds that such an appropriation would *jeopardize the actuarial soundness of the fund*. This raises a “chicken and egg” problem, due to the fact that the SBA has historically established rates for the FHCF in March for contracts beginning on June 1, which is prior to the time that the Legislature typically makes its annual appropriation for the upcoming fiscal year (*sine die* in May). The SBA has also historically established premiums that include exactly \$10 million designated for loss mitigation purposes. The remainder of the premium represents the actuarially determined amount necessary to pay the expected losses and expenses of the fund, based on conservative investment assumptions. Therefore, any amount appropriated in excess of \$10 million for loss mitigation has been deemed to jeopardize the actuarial soundness of the fund unless the SBA increased the premiums to account for the excess appropriation. This occurred in 2001, when the SBA approved a \$20 million increase in FHCF premiums (in addition to approving premium changes due to other factors) to achieve actuarial soundness in response to the legislative appropriation of \$30 million from the FHCF for loss mitigation, as compared to the average \$10 million appropriated in each of the prior years and the \$10 million base amount used by the SBA for their premium calculations.

This \$30 million appropriation in the 2001-02 budget raised concerns due to the impact on residential property insurance premiums. Insurers are expressly allowed to fully recoup FHCF premiums in the premiums they charge to residential property policyholders.¹³ The additional \$20 million appropriation, compared to the \$10 million appropriation for each of the prior years, triggered a \$20 million increase in FHCF premiums, which was a 4.1 percent increase. On average, this resulted in about a 0.54 percent increase in residential property insurance premiums, assuming insurers recovered this amount in their approved rate filings.¹⁴

Last year, in developing the premium formula for 2002-03 before the legislative appropriation was known, the SBA approved rates based on various levels of mitigation ranging from \$10 million to \$50 million in increments of \$5 million. Net of the vetoed amount, the \$19.075 million appropriation resulted in a decrease in FHCF rates, compared to the \$30 million appropriation for the prior year (taking into account only the mitigation funding). But, the rates were higher than they would have been, had only \$10 million been appropriated.

¹² In addition to a \$10 million appropriation, the appropriations implementing bill (s. 29, ch. 2002-394, L.O.F.) added subsection (16) to s. 215.555, F.S., to provide that for the 2002-2003 fiscal year only, the State Board of Administration must disburse funds from the FHCF to the Ecosystem Management and Restoration Trust Fund of the Department of Environmental Protection in an amount equal to 8.47 percent of the appropriation made from that Trust Fund for “Grants and Aids to Local Government and Non-State Entities - Fixed Capital Outlay, Statewide Restoration Projects” in the 2002-2003 General Appropriations Act. The grants from this Trust Fund totaled \$118,098,333. The Governor vetoed item 1769 which totaled \$10,951,833 so, in effect, 8.47 percent of this amount, or \$927,600 was the portion of the vetoed amount from the FHCF.

¹³ S. 627.062(5), F.S.

¹⁴ The \$487 million FHCF premium in 2001 was estimated to be about 13.2 percent of the total \$3.7 billion in Florida residential property insurance premiums. Therefore, if FHCF premiums were increased by 4.1 percent, residential property insurance premiums were estimated to increase by 13.2 percent x 4.1 percent, which equals 0.54 percent.

The maximum amount that may be appropriated each year from the FHCF for hurricane loss mitigation is 35 percent of the fund’s investment income for the prior fiscal year. The following chart shows the investment income earned by the fund each year since its inception, and 35 percent of each year’s amount:

FHCF Investment Income		
<u>Fiscal</u> <u>Year</u>	<u>Investment</u> <u>Income</u>	<u>35 Percent of</u> <u>Investment</u> <u>Income</u>
94-95	\$ 20,183,000	\$ 7,064,050
95-96	\$ 46,379,000	\$16,232,650
96-97	\$ 74,425,000	\$26,048,750
97-98	\$109,979,000	\$38,492,650
98-99	\$132,516,000	\$46,380,600
99-00	\$173,839,000	\$60,843,650
00-01	\$220,915,000	\$77,320,250
01-02	\$122,535,000	\$42,887,250

A question of statutory interpretation is which year’s investment income should be used to establish the 35 percent cap. It may be unclear whether the statutory reference to the investment income from the “prior fiscal year” refers to the year prior to the year for which the appropriation is made, or prior to the year during which the Legislature enacts the appropriation. If read to refer to the year prior to the year for which the appropriation is made, the Legislature must estimate the investment income for the fiscal year before it has ended. And, as 2001-02 demonstrates, it cannot be assumed that the later year will have greater investment income.

III. Effect of Proposed Changes:

The Senate Joint Resolution proposes an amendment to the State Constitution, for approval or rejection by the electors, to limit the use of the assets of the Florida Hurricane Catastrophe Fund and to restrict legislative appropriations from the fund. As currently required by general law in s. 215.555, F.S, the constitutional amendment would require that the assets of the FHCF be used exclusively for paying catastrophic hurricane loss obligations arising out of reimbursement contracts with insurers, paying debt service on revenue bonds and financing arrangements issued by or on behalf of the fund, reinsurance costs of the fund, administrative expenses of the fund, and an annual appropriation for hurricane loss mitigation programs.

The proposed amendment also provides substantially the same requirement as the current statute that an appropriation from the FHCF for hurricane loss mitigation programs may not exceed 35 percent of the fund’s investment income, and that at least \$10 million be appropriated annually. However, the amendment differs from current law by requiring that the Legislature appropriate \$10 million from the FHCF (no more, no less) in the General Appropriations Act for hurricane loss mitigation programs, and that any additional appropriation from the fund for such programs must be approved by a vote of three-fourths of the membership of each house of the Legislature in a separate bill or bills for that purpose only.

The proposed amendment also clarifies a question of interpretation of the current statute, by specifying that the relevant year for determining the investment income of the FHCF, for purposes of calculating the 35 percent cap, is the fiscal year that concluded 2 years before the effective date of the appropriation (as compared to “the prior fiscal year” as used in the current statute). For example, if the effective date of the appropriation is July 1, 2003, then June 30, 2002, would be the fiscal year that concluded two years before the effective date of the appropriation. This would allow for the use of fiscal year-end audited financial statements when determining investment income, rather than relying on estimates.

The proposed amendment specifies that it does not limit the authority of the Legislature to abolish or otherwise terminate the operations of the FHCF.

The proposed amendment, in effect, prohibits the Legislature from amending the current law to allow for FHCF funds to be used for any other purposes than those specified in the amendment, which are substantially the same purposes currently expressed in s. 215.555, F.S. The proposed amendment uses, but does not define or expand upon the phrase, *hurricane loss mitigation programs*. This is the phrase used in the current statute, but the statute also specifies types of programs which qualify as hurricane loss mitigation programs and requires allocation of \$10 million to the Department of Community Affairs for specified purposes, as described in Present Situation, above. These current law provisions do not appear to conflict with the proposed constitutional amendment’s limitations to use funds for *hurricane loss mitigation programs*. The Legislature would continue to have relatively broad authority to determine what constitutes a hurricane loss mitigation program. But, the Legislature would be prohibited from amending the law to allow for any less than \$10 million to be appropriated annually for hurricane loss mitigation programs, or more than 35 percent of investment income of the fiscal year that concluded 2 years before the effective date of the appropriation. And, as mentioned, exactly \$10 million must be appropriated in the General Appropriations Act, for such programs, and separate bill or bills subject to super-majority voting requirements would be required for appropriations in excess of this amount.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Residential property insurers and their policyholders would be afforded greater protection, due to a state constitutional requirement that the funds of the FHCF be used only for those purposes currently authorized by general law. As such, the reinsurance coverage provided by the FHCF, which is significantly less expensive than private reinsurance and tends to lower residential property insurance premiums, would be protected from possible legislative changes that would allow funds to be used for other purposes, which could negatively impact the availability of residential property insurance in the state. Similarly, hurricane loss mitigation funding above \$10 million may be less likely due to the requirement for a separate bill and super-majority vote, which lessens the chances of residential property insurance premiums being increased as a result of such additional appropriations.

On the other hand, the bill negatively impacts any potential private sector beneficiary of appropriations from the FHCF beyond those purposes currently authorized by statute, or of appropriations in excess of \$10 million.

C. Government Sector Impact:

The Department of Community Affairs, the Department of Environmental Protection, and other agencies that may be appropriated funds from the FHCF for hurricane loss mitigation programs may be less likely to obtain total funding above \$10 million, due to the requirement for a separate bill and super-majority vote.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.