HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 3631 (PCB FS 98-04)

RELATING TO: Hurricane loss mitigation

SPONSOR(S): Committee on Financial Services, Representative Safley & others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES YEAS 9 NAYS 0
(2) FINANCE AND TAXATION
(3)
(4)
(5)

I. SUMMARY:

Currently under s. 215.555(7)(c), F.S., the Legislature is required to appropriate from the investment income of Florida Hurricane Catastrophe Fund an amount no less than $10 million and no more than 35 percent of the investment income of the fund from the previous fiscal year. These funds are appropriated for the purposes of reducing losses from a potential hurricane and increasing hurricane preparedness.

HB 3631 creates the Hurricane Loss Mitigation Clearing Trust Fund. 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 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;
- five percent to the Office of the Insurance Consumer Advocate of the Department of Insurance to be used for consumer education and awareness; and
- ten percent to the State University System to be used for research regarding hurricane loss reduction devices and techniques for residences and the calculation of potential loss reductions for use in insurers' rate filings.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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. Established pursuant to s. 215.555, F.S., 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.

Beginning fiscal year 1997-1998, 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 would reduce such losses, educate or inform the public as to means that would 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, "[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 IRS in finding the Cat Fund to be tax exempt.

B. EFFECT OF PROPOSED CHANGES:

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

Beginning with the 1998-1999 fiscal year, the State Board of Administration would 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 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. The actuarial soundness would be "jeopardized" if the transfer of these additional monies would result in higher Cat Fund premiums being charged based on the Cat Fund premium formula approved by the Trustees of the Board for the year.

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

- Eighty-five percent would be transferred to the Grants and Donations Trust Fund of the DCA to be used for programs to improve the wind resistance of residences, including loan subsidies, grants, and demonstration projects; cooperative programs with local governments, the Federal Government, and the Institute of Business and Home Safety; and other efforts to prevent or reduce losses or costs of rebuilding after a disaster.

- Five percent would be transferred to the Insurance Commissioner's Regulatory Trust Fund to be used by the Office of the Insurance Consumer Advocate of the Department of Insurance (DOI) for consumer awareness and education to encourage consumers to reduce their property insurance costs. Included in this would be a statewide television and radio public awareness campaign. The funding for this program would be required to be matched by in-kind services. The Office of the Consumer Advocate of the DOI would be required to consult with the DCA prior to spending any moneys.

- Ten percent would be transferred to the Operations and Maintenance Trust Fund of the Board of Regents-General Office to be used by the State University System (SUS) to support programs of research and development of hurricane loss reduction devices and techniques for residences. Funding for the research and development programs would be required to be matched by an equal amount of in-kind services from sources other than the SUS. The SUS would be required to consult with the DCA prior to spending any moneys allocated from the Hurricane Loss Mitigation Clearing Trust Fund.

Under the allocation to the DCA, those homeowners eligible for loan subsidies and other forms of direct assistance would be limited to policyholders of the Florida Windstorm Underwriting Association (FWUA). Policyholders who take actions under these loan subsidies and direct assistance would qualify for premium discounts as filed by the FWUA and approved by the DOI. Changes made by a policyholder using these funds would not constitute an improvement to homestead property under ch.193, F.S., and therefore, would not trigger a potential a potential revaluation of real property. Additionally, 10 percent of the total value of the loan subsidies and direct assistance would have to be used for mobile homes, including programs to inspect and improve tie-downs.

An advisory council would be created to consult with the DCA in the development of programs. In addition to the Insurance Consumer Advocate and the Chief Operating Officer of the Cat Fund, members of this advisory council would include representatives of:

- the DOI,

- the Residential Property and Casualty Joint Underwriting Association,
- the FWUA,
- mortgage lenders,
- home builders,
- building officials,
- insurance companies,
- the Institute for Business and Home Safety,
- the Federation of Mobile Home Owners,
- a code development agency, and
- the Federal Emergency Management Agency.

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Moneys provided to the DCA and the Office of the Insurance Consumer Advocate of the DOI from the Hurricane Loss Mitigation Clearing Trust Fund could not be used to replace other funding sources, but would have to be used to supplement them.

Beginning on January 1, 2000, the DCA would 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 would remain in the fund and be available to carry out the purposes of the trust fund.

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.

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 DOI, the DCA and the SUS would be required to implement or expand programs in regards to 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:

Creates s. 215.559, F.S. Amends s. 215.555, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 creates the Hurricane Loss Mitigation Clearing Trust Fund under the administration of the Comptroller. This trust fund would contain moneys transferred from the Cat Fund pursuant to s. 215.555(7)(c). The bill provides for the allocation of funds to the Department of Community Affairs, the Office of the Insurance Consumer Advocate of the Department of Insurance and the State University System.

Section 2 amends s. 215.555, F.S., requiring the State Board of Administration to transfer funds from the Cat Fund to the Hurricane Loss Mitigation Clearing Trust Fund. The amount to be transferred by the Board is $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 previous fiscal year. The Board will limit the transfer to $10 million if the appropriation of additional investment income jeopardizes the actuarial soundness of the Cat Fund.

Section 3 provides that this bill will take effect upon becoming law.

III. FISCAL RESEARCH & 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:

   N/A

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

   N/A

D. FISCAL COMMENTS:

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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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