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DATE: March 1, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: CS/HJR 1441
RELATING TO: Florida Hurricane Catastrophe Fund
SPONSOR(S): Committee on Insurance and Representative(s) Waters

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 13 NAYS 0
 - (2) COUNCIL FOR COMPETITIVE COMMERCE
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The Florida Hurricane Catastrophe Fund ("Cat Fund") was created after Hurricane Andrew to stabilize the Florida property insurance market by providing the equivalent of reinsurance to all insurers writing residential property insurance coverage in Florida. The Cat Fund annually collects more than \$400 million in premium from these insurance companies. The Legislature is required annually to appropriate from the investment earnings of the fund an amount not less than \$10 million and not more than 35 percent of these earnings, for the purpose of funding hurricane loss mitigation programs.

For fiscal year 2001-02, the Legislature appropriated \$30.3 million from the investment earnings of the Cat Fund. This represented a substantial increase in appropriated funds over the four previous fiscal years.

The joint resolution proposes an amendment to the Florida Constitution restricting the use of Cat Fund assets to those purposes now permitted in statute and requiring the Legislature to appropriate annually \$10 million from the investment earnings of the Cat Fund in the General Appropriations Act for hurricane loss mitigation programs. Any additional appropriations from the Cat Fund for hurricane loss mitigation programs would require approval by a vote of three-fourths of the membership of each house in a separate bill limited to that purpose. The aggregate amount appropriated from the Cat Fund in any fiscal year for hurricane loss mitigation programs could not exceed the greater of \$10 million or 35 percent of the investment earnings of the Cat Fund.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (or Cat Fund, as it is commonly known) as a source of reimbursement for insurers for a portion of their losses from hurricanes without the availability and price fluctuations characteristic of the private reinsurance market. The State Board of Administration, consisting of the Governor, the Comptroller, and the Treasurer (Insurance Commissioner), administers the Cat Fund.

All authorized insurers writing covered policies (i.e., defined as any policy covering residential property in Florida, except for any policy that excludes wind coverage), including the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association, must enter into reimbursement contracts with the Cat Fund. In exchange for insurer payment of premium, the Cat Fund agrees to reimburse them for a portion of their hurricane losses in excess of a specified amount, known as the insurer’s “retention,” based on the coverage level selected by the insurer (i.e., 45, 75 or 90 percent). Insurers may then recoup the amount of Cat Fund reimbursement premium payments from their policyholders.

For the fiscal year ending June 30, 2001, the Cat Fund had a year-end balance of \$3.8 billion. It received \$439 million in premium revenues and earned \$221 million in investment income.

Use of Cat Fund Assets

Cat Fund moneys may be used only for certain express purposes to pay obligations under reimbursement contracts, debt service under revenue bonds issued to meet reimbursement obligations, reinsurance costs, administrative costs, and mitigation program costs.¹

Mitigation Funding Through the Florida Hurricane Catastrophe Fund

Since fiscal year 1997-98, the Legislature has been required to appropriate from the investment earnings of the Cat Fund an amount no less than \$10 million, but no more than 35 percent of these earnings, for the purpose of funding hurricane loss mitigation programs² intended to:

¹ Section 215.555, F.S.

- improve hurricane preparedness;
- reduce potential losses in the event of a hurricane;
- provide research into means to reduce such losses;
- educate or inform the public as to means to reduce hurricane losses;
- assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades; or
- protect local infrastructure from potential damage from a hurricane.”³

As can be seen in Table 1, the Legislature appropriated \$30.3 million from the investment earnings of the Cat Fund for fiscal year 2001-02. This represented a substantial increase in appropriated funds over the four previous fiscal years and, according to the Cat Fund, necessitated a 4.14 percent rate increase in Cat Fund rates rather than a decrease of 0.3 percent. Table 1 compares amounts appropriated since the requirement was first imposed.

| Table 1. Appropriations using the investment earnings of the Cat Fund compared to authorized amounts, fiscal years 1997-98 through 2001-02. | | | | |
|---|-------------------|--|-------------------------------------|--------------------------------------|
| Fiscal Year | Investment Income | Mitigation Funding Authorized in Statute | | Actual Amount Appropriated |
| | | Minimum | Maximum (35% of Investment income)* | |
| 2001-02 | \$221,204,000 | \$10,000,000 | \$77,421,000 | \$30,284,000 |
| 2000-01 | \$174,292,000 | \$10,000,000 | \$61,002,200 | \$12,200,000 |
| 1999-00 | \$132,611,000 | \$10,000,000 | \$46,413,850 | \$10,265,000 (\$3,300,000 vetoed) |
| 1998-99 | \$110,806,000 | \$10,000,000 | \$38,782,000 | \$10,000,000 |
| 1997-98 | \$74,997,000 | \$10,000,000 | \$26,248,950 | \$10,000,000 (\$2,800,000 vetoed) |

Source: *Florida Hurricane Catastrophe Fund, February 2002; and the General Appropriations Act for fiscal years 1997-98 through 2001-02.*

* Moneys in excess of \$10 million are not available for appropriation if the State Board of Administration finds that it would jeopardize the actuarial soundness of the fund.⁴

Allocation of Cat Fund Mitigation Dollars

From the amount of investment earnings appropriated, the Legislature is required to direct \$10 million to the Department of Community Affairs for hurricane loss mitigation purposes.⁵ Of this amount:

² The Internal Revenue Service has declared the Cat Fund immune from federal taxation because it serves a public purpose with only an incidental benefit to the private sector. The mandatory use of some portion of Cat Fund moneys for the public purpose of mitigation was one factor relied upon by the Internal Revenue Service in granting tax-exempt status to the Cat Fund.

³ Section 215.555(7), F.S.

⁴ Id.

⁵ Section 215.559, F.S.

- 70 percent (\$7 million) must be used for programs to improve the wind resistance of residences and mobile homes, (including the use of loans, subsidies, grants, demonstration projects, and direct assistance), cooperative programs with local governments and the federal government, and other efforts to reduce losses or the cost of rebuilding after a hurricane. Of the \$7 million, 40 percent (\$2.8 million) is earmarked for inspecting and improving tie-downs for mobile homes and 10 percent (\$700,000) for use by the State University System to support programs of research and development of hurricane loss reduction devices and techniques for residences and mobile homes.
- 30 percent (\$3 million) must be used to retrofit existing facilities used as hurricane shelters.

The majority of funds appropriated for the purpose of hurricane loss mitigation have supported the Hurricane Loss Mitigation Program administered by the Department of Community Affairs and stormwater and flood control projects in Broward, Dade, and Palm Beach counties. Funds also have been used for federal pre-disaster mitigation programs requiring a state match, local emergency management projects, retrofitting of disaster shelter space, underground utilities projects, local firefighting equipment, staff expenses associated with the development of a model building codes information system, and mobile home safety projects.

C. EFFECT OF PROPOSED CHANGES:

The joint resolution would propose an amendment to the Florida Constitution restricting the use of Cat Fund assets to those purposes now permitted in statute and requiring the Legislature to appropriate annually \$10 million from the investment earnings of the Cat Fund in the General Appropriations Act for hurricane loss mitigation programs. Any additional appropriations from the Cat Fund for hurricane loss mitigation programs would require approval by a vote of three-fourths of the membership of each house (i.e., 90 House, 30 Senate) in a separate bill limited to that purpose. The aggregate amount appropriated from the Cat Fund in any fiscal year for hurricane loss mitigation programs could not exceed the greater of \$10 million or 35 percent of the investment earnings of the Cat Fund.

These procedural requirements would be similar to those set forth in the state constitution for consideration of legislation creating a trust fund, although this bill would require a three-fourths vote rather than the three-fifths vote required to create a new trust fund.⁶

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁶ Art. III, Sec. 19(f), Fla. Constitution.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from HJR 1441 as filed in that the committee substitute:

- provides that the \$10 million appropriated annually as proposed in the resolution must be appropriated in the General Appropriations Act;

- provides that the special procedural requirements in the resolution apply only to any appropriation of dollars from the Cat Fund above the \$10 million for hurricane loss mitigation programs included in the General Appropriations Act;

[This is designed to address the question of whether or not the special procedural requirements apply to a specific appropriation exceeding \$10 million or to appropriations exceeding \$10 million in the aggregate (for example, five separate appropriations, each one below the \$10 million threshold, but taken together, exceeding that threshold).]

- requires appropriations above the \$10 million in the General Appropriations Act for hurricane loss mitigation programs be approved by a three-fourths vote of the membership of each house, rather than a three-fifths vote as originally proposed.
- limits the aggregate amount of appropriations from the Cat Fund in any fiscal year for hurricane loss mitigation programs to \$10 million or 35 percent of the investment earnings of the Cat Fund, whichever is greater.

When engrossing the amendments into the joint resolution, House Bill Drafting incorporated additional technical corrections to resolve an internal inconsistency in the resolution.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Stephen T. Hogge

Staff Director:

Stephen T. Hogge

AS REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Leonard Schulte

Council Director:

Matthew M. Carter II