HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Hurricane Loss Mitigation Program
SPONSOR(S): Frishe and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Duncan	Hoagland
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Fennell	Davis
3) Economic Affairs Committee	10 Y, 0 N	Duncan	Tinker

SUMMARY ANALYSIS

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), tax-exempt trust fund, in response to the problems that developed in the residential property insurance industry following property losses incurred as a result of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service issued a private letter ruling granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.

Since fiscal year 1997-98 and annually thereafter, the Legislature is required to appropriate from the investment income of the FHCF no less than $10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for state agencies, local governments, 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 means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures; or
- Protect local infrastructure from potential damage from a hurricane.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA), funded by the annual appropriation of $10 million from the FHCF. The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. The HLMP expires on June 30, 2011.

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2021 and deletes an obsolete provision.

This bill has no fiscal impact on the General Revenue fund. Annually, $10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1993,[1] the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in response to the problems that developed in the residential property insurance industry following property losses incurred as a result of catastrophic events, including Hurricane Andrew in 1992.[2] It was determined that state action was required to correct the inability of the private sector insurance and reinsurance market to maintain sufficient capacity to enable residents of the state to obtain property insurance coverage in the private sector.[3] The program is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses in order to provide additional insurance capacity for the state.[4] The FHCF is administered by the State Board of Administration, which is governed by a three member Board of Trustees, comprised of the Governor as Chairman, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary.[5]

When the Internal Revenue Service issued a private letter ruling[6] granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.[7] Beginning in fiscal year (FY) 1997-98 and annually thereafter, the Legislature is required to appropriate from the investment income of the FHCF no less than $10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for state agencies, local governments, 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 means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures; or
- Protect local infrastructure from potential damage from a hurricane.[8]

In 1999,[9] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA), funded by the annual appropriation of $10 million from the FHCF. The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. Specifically, current law requires the funds to be used as follows:

- Three million dollars ($3 million) must be directed toward retrofitting existing public facilities to enable them to be used as public shelters during a disaster. DCA must prioritize the use of the

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[1] Chapter 93-409, L.O.F.
[2] Section 215.555(1)(a), F.S.
[3] Section 215.555(1)(c), F.S.
[4] Section 215.555(1)(e), F.S.
[5] Section 215.555(3), F.S., and Article IV, s. 4, Florida Constitution.
[6] A “private letter ruling,” or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer’s specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer’s return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Understanding IRS Guidance – A Brief Primer*, http://www.irs.gov/irs/article/0,,id=101102,00.html (last visited March 14, 2011).
[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, *available at* http://www.sbafla.com/fhcf/LinkClick.aspx?fileticket=1xICIFXr4Vg%3d&tabid=315&mid=994.
[8] Section 215.555(7)(c), F.S.
[9] Chapter 99-305, L.O.F.

funds for projects included in the annual Shelter Retrofit Report and give priority to regional planning council areas with shelter deficits and projects that maximize the use of state funds.[10]

According to the Division of Emergency Management, since 1995, more than 1,156,750 shelter spaces (statewide) have been created or funded through a combination of retrofitting and the use of enhanced wind design and construction standards in new facilities. However, a shelter deficit of 312,767 spaces (statewide) remains.[11]

- Seven million dollars ($7 million) is used to implement the Residential Construction Mitigation Program (RCMP) which must:
  - Improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance.
  - Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government.
  - Prevent or reduce losses or reduce the cost of rebuilding after a disaster.

Of the $7 million allocated to improve wind resistance and reduce losses after a disaster:

- Forty percent ($2.8 million) is directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program which is appropriated directly to Tallahassee Community College (TCC) .[12]

  On or before January 1, TCC is required to submit an annual report of its activities to the Governor, the President of the Senate and the Speaker of the House of Representatives. Specifically, the report must provide the number of homes that have taken advantage of the program, the types of enhancement and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in the availability of insurance products to owners of manufactured or mobile homes.[13]

  In FY 2009-10, seven counties (Pasco, Volusia, Lee, Pinellas, Charlotte, St. Johns, and Manatee) participated in the program and 1,969 manufactured homes in 12 communities were retrofitted with new foundation systems.[14] The report did not state whether there had been an increase in the availability of insurance products to owners of manufactured or mobile homes.[15]

- Ten percent ($700,000) is directed to the Florida International University (FIU) for hurricane research.[16]

  Research conducted by FIU during FY 2009-10 included: Wind Effects on Photovoltaic Panels Mounted on Residential Roofs; Wind Pressure and Resistance Evaluation for Hip and Ridge Tiles and Attachments; and Combining Experimental and Survey Evidence for Promoting Hurricane Risk Mitigation Efforts and Disaster Preparedness.[17]

- The remaining 50 percent ($3.5 million) is directed to programs developed by DCA with advice from the Residential Construction Mitigation Program (RCMP) Advisory Council.[18]

  Activities during FY 2009-10 included mitigation upgrades for 104 residences of low-to-moderate income families. Funds from the State Housing Initiatives Partnership (SHIP) Program, Hazard

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[10] Section 215.559(2)(b), F.S.

[11] Florida Division of Emergency Management, *2010 Shelter Retrofit Report*, Sept. 2010, at p. 24, hand delivered to the Community and Military Affairs Subcommittee. All General Population Hurricane Shelter capacities are calculated based on 20 sq. ft. per evacuee and Persons with Special Needs Hurricane Shelters are calculated on 60 sq. ft. per client. *Id*.

[12] Section 215.559(3), F.S.

[13] Section 215.559(3)b.4., F.S.

[14] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2010 Annual Report*, Dec. 27, 2010, p. 4, hand delivered to the Community and Military Affairs Subcommittee.

[15] *See supra* 13 at p.30.

[16] Section 215.559(4), F.S.

[17] *See supra* note 13 at pp. 11-12.

[18] Section 215.559(5), F.S.

Mitigation Grant Program, Home Investment Partnerships and/or the Community Development Block Grant Program were used to leverage mitigation funds.[19]

The Residential Construction Mitigation Program (RCMP) Advisory Council (Council) is responsible for advising DCA in support of the RCMP and makes recommendations for approving applications for program grants to state or regional agencies, local governments, and private organizations. These grants are awarded to help these entities implement projects intended to enhance residential wind mitigation. The Council also annually reviews and approves Florida International University's hurricane research work plan. The Council must consist of:[20]

- A representative designated by the Chief Financial Officer.
- A representative designated by the Florida Homebuilders Association.
- A representative designated by the Florida Insurance Council.
- A representative designated by the Federation of Manufactured Home Owners.
- A representative designated by the Florida Association of Counties.
- A representative designated by the Florida Manufactured Housing Association.

Annually, DCA must submit a report and accounting of activities under the HLMP as well as an evaluation of the activities. The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[21] The recommendations may be used by insurers for potential discounts or rebates.[22]

Below are the Hurricane Loss Mitigation Program Activities for FY 2010-11:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2010-11[23]	
Shelter Retrofit Program	$3,000,000
Residential Construction Mitigation Program	$822,176
Mitigation Planning	$318,719
Public Outreach	$297,972
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$7,938,867**

The Hurricane Loss Mitigation Program expires on June 30, 2011.[24]

Effect of the Proposed Changes

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2021. The bill also deletes an obsolete provision which authorized, for FY 2010-11, the $3 million public shelter funds to also be used for hurricane shelter projects specifically identified in the General Appropriations Act.[25]

B. SECTION DIRECTORY:

Section 1: Amends s. 215.559(8) and (9), F.S., deleting an obsolete provision and extends the repeal date of the Hurricane Loss Mitigation Program to June 30, 2021.

Section 2: Provides an effective date of July 1, 2011.

[19] *See supra* note 13 at p. 8.
[20] Section 215.559(5), F.S.
[21] Section 215.559(7), F.S.
[22] *Id*. *See* s. 627.0629, F.S.
[23] *See supra* note 13 at pp. 28-29. Additional projects will be awarded through the RFP process and have yet to be allocated. *Id*.
[24] Section 215.559(9), F.S.
[25] Section 215.559(8)(a), F.S., specific appropriations 1617 and 1615A, ch. 2010-152, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Annually, $10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2021.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the Hurricane Loss Mitigation Program strengthen structures, educate the public, and reduce property losses, the public and private sector will benefit.

D. FISCAL COMMENTS:

See FISCAL IMPACT ON STATE GOVERNMENT.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Should the mitigation program and funding for mitigation purposes be repealed, the tax-exempt status of the FHCF could be in jeopardy.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.