

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 168

INTRODUCER: Banking and Insurance Committee and Senator Hooper

SUBJECT: Hurricane Loss Mitigation Program

DATE: February 3, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 168 extends until June 30, 2031, the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA) Division of Emergency Management (DEM). The HLMP funds programs that improve the wind resistance of residences and public hurricane shelters. The HLMP program operations are funded through an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund to the Division of Emergency Management. The HLMP and the associated \$10 million appropriation from the Florida Hurricane Catastrophe Fund are set to expire on June 30, 2021.

The bill takes effect upon becoming law.

II. Present Situation:

Hurricane Loss Mitigation Program

In 1999,¹ the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA) Division of Emergency Management (DEM),² for the purpose of funding programs for improving the wind resistance of residences and mobile homes. The HLMP can provide funding through loans, subsidies, grants, demonstration projects, and

¹ Chapter 99-305, L.O.F.

² In 2011, the Legislature transferred the DEM to the Executive Office of the Governor, where it presently resides. *See* Chapter 2011-142, L.O.F.

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 is funded by an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund.³ Specifically, current law requires the funds to be used as follows:

- \$3 million must be directed toward retrofitting existing facilities used as public hurricane shelters. DEM must prioritize use of these funds for projects included in the annual Shelter Retrofit Report.⁴ DEM must similarly prioritize these funds to projects in regional planning council regions that have shelter deficits and to projects that maximize the use of state funds.⁵
- \$7 million must be directed toward programs that improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; educating persons concerning the Florida Building Code; and other efforts to prevent or reduce losses or reduce the cost of building after a disaster.⁶

Of the \$7 million allocated to improve the wind resistance of residences and mobile homes, provide education regarding Florida Building Code cooperative programs, and to reduce the cost of rebuilding after a disaster:

- 50 percent (\$3.5 million) is directed to grant funding for governmental entities, nonprofit organization, and qualified for-profit organizations to improve the resiliency of residential, community, and government structures within their communities.
- 40 percent (\$2.8 million) must be directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (Mobile Home Tie-Down Program) for the purpose of mitigating future losses for mobile homes, and to inspect and improve tie-downs for mobile homes. The program is administered by Tallahassee Community College (TCC).⁷
- 10 percent (\$700,000) must be directed to the Florida International University (FIU) for hurricane research.⁸

On January 1 of each year, DEM submits an annual report⁹ 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.¹⁰

The HLMP expires on June 30, 2021.¹¹

³ Section 215.559(1), F.S.

⁴ The Shelter Retrofit Report is prepared annually and separately submitted to the Governor and the Legislature. *See* Section 252.385, F.S.

⁵ Section 215.559(1)(b), F.S.

⁶ Section 215.559(1)(a), F.S.

⁷ Section 215.559(2), F.S.

⁸ Section 215.559(3), F.S.

⁹ Hurricane Loss Mitigation Reports reside on the DEM website: <https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/> (last accessed January 28, 2021).

¹⁰ Section 215.559(6), F.S.

¹¹ Section 215.559(7), F.S.

Mobile Home Mitigation and Enhancement Program (Mobile Home Tie-Down Program)

The Mobile Home Tie-Down Program operates as a constituent part of the HLMP for the purpose of mitigating future losses and inspecting and improving tie-downs for mobile homes built before 1999 to meet the current standards established in Rules 15C-1.0101 through 15C-1.0109, F.A.C. Mitigation under the Mobile Home Tie-Down Program includes problems associated with weakened trusses, studs, and other structural component caused by wood rot or termite damage; site-built additions, such as porches or carports; tie-down systems; and any additional issues deemed appropriate by TCC, the Federation of Manufactured Home Owners of Florida, the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles (DHSMV).¹²

The Mobile Home Tie-Down Program is funded by a direct \$2.8 million allocation under the HLMP to TCC, which serves as program administrator.¹³ The Mobile Home Tie-Down Program does not, and mobile homes are ineligible to, receive federal mitigation funds under Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Grant, Building Resilient Infrastructure and Communities, or Hazard Mitigation Grant programs.

Since 1999, the Mobile Home Tie-Down Program has served over 40,000 mobile homes in over 275 mobile home communities.¹⁴ Activities during 2019-2020 fiscal year included 1,702 completed mobile homes in 14 mobile home communities.¹⁵ COVID-19 travel, inspection, and community access restrictions prevented the Mobile Home Tie-Down Program from expensing 100% of the allocated funds.¹⁶

Third party studies of the Mobile Home Tie-Down Program report improved wind resistance following participation in the program. In 2005, a FEMA Mitigation Branch Technical Services Division study of impacted mobile home communities during 2004 hurricane season reported 4 percent to 5 percent of inspected mobile homes with retrofitted tie-downs were substantially damaged.¹⁷ The same study reported the primary cause of damage to mobile homes was caused instead by roof failure associated with the destruction of carports and sunrooms not constructed to code.¹⁸

¹² Section 215.559(2)(b)1, F.S.

¹³ Section 215.559(2)(a), F.S.

¹⁴ Florida Housing Coalition, *Hurricane Member Update Webinar* (August 28, 2020), <https://www.flhousing.org/wp-content/uploads/2020/09/FHC-Hurricane-Member-Update-8-28-20.pdf> (last visited December 21, 2020).

¹⁵ Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2019 Annual Report* (January 1, 2020), <https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/> (last visited December 21, 2020).

¹⁶ *Id.* at note 14.

¹⁷ https://www.fema.gov/media-library-data/20130726-1711-25045-6495/third_party_analysis_of_manufactured_home_retrofit_tie_downs.pdf at p. 3

¹⁸ https://www.fema.gov/media-library-data/20130726-1711-25045-6495/third_party_analysis_of_manufactured_home_retrofit_tie_downs.pdf at p. 5

As of December 2020, the Mobile Home Tie-Down Program reported a current waiting list of seven years.¹⁹ TCC is not accepting new applications until the waiting list shortens to three years.²⁰

Program Audits

Several third party audits have made recommendations for improving the Mobile Home Tie-Down Program. FEMA's 2005 study, *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, observed up to 90 percent of all original tie-down straps, and a significant percentage of retrofit tie-down straps, were loose, increasing the likelihood of rotation of the upper structure upon wind loading of the side and flexure of the entire structural system. The study recommended sizing of tie-down anchors according to soil probe tests during installation to reduce pullout.²¹

In 2016, the Florida Auditor General audited 3,033 DEM contracts between July 2013 and January 2015, for compliance with state law requiring the DEM to timely provide the public with access to state contract and grant financial information.²² The subsequent report recommended DEM enhance procedures to ensure that contract information is timely made public, citing 72 percent timeliness rates for contracts executed prior to July 2013 and 64 percent timeliness rates for contracts executed after July 2013, respectively.²³

Also in 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited 10 DEM contracts and grants between January 2015 and December 2015, including the Mobile Tie-Down Program, as follow-up to its previous audit disclosing a contract deficiency rate of 95% and a management deficiency rate of 43%.²⁴ The Bureau determined the Mobile Home Tie-Down Program should be classified as "grant and aid," with future payments from DEM to TCC subject to a written agreement for services to include a clear scope of work, deliverables, financial consequences, and monitoring.²⁵

Fiscal Year 2016-2017 Adopted Recommendations and Program Improvements

Beginning in 2016-2017 fiscal year, DEM executed a written agreement for services with TCC for administering the Mobile Home Tie-Down Program, which included a clear scope of work,

¹⁹ Telephone conversation with Amy Bradbury, Director of Financial Planning and Sponsored Programs, Tallahassee Community College, in Tallahassee, Fla. (December 14, 2020).

²⁰ Tallahassee Community College, *Mobile Home Tie-Down Program*, <https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/> (last visited December 21, 2020).

²¹ Federal Emergency Management Agency, Mitigation Section, Technical Services Branch, *Third Party Analysis of Manufactured Home Retrofit Tie Downs* (June 2005), https://www.fema.gov/media-library-data/20130726-1711-25045-6495/third_party_analysis_of_manufactured_home_retrofit_tie_downs.pdf at p. 8. (last visited December 21, 2020).

²² See State of Florida Auditor General, *Operational Audit: Division of Emergency Management Contract and Grant Management and Prior Audit Follow-Up* (April 2016), https://flauditor.gov/pages/pdf_files/2016-188.pdf at p. 2. (last visited December 21, 2020).

²³ *Id.* at p. 3.

²⁴ *May 10, 2016 Letter from Department of Financial Services Bureau of Auditing to Division of Emergency Management Director Bryan Koon*, https://www.myfloridacfo.com/division/aa/Aud_Act/docs/DEM%20Report%20dtd%205-10-2016_Redacted.pdf (last visited December 16, 2020).

²⁵ *Id.* at p. 3.

deliverables, financial consequences, and monitoring. Other notable program changes that were adopted include:²⁶

- Payment of funds are subject to cost reimbursement procedures instead of an automatic draw.
- Quarterly submission of invoices and program reports to DEM.
- RFP open to multiple vendors.
- RFP requirement of licensed mobile home installers
- DEM monitoring of the program, including on-site visits and limited scope audits.
- Required pre-inspection process.
- Submission of reports to DEM identifying homes prior to mitigation.
- DHSMV audits of mobile home installers' post-inspection reports
- Removal of the percentage of participating homes within a community as a factor in serving a community.
- Participation by individual mobile homeowners and communities without an established HOA.

Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt²⁷ fund created in 1993²⁸ after Hurricane Andrew²⁹ as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)³⁰ and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)³¹ of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.³² The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.³³ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to

²⁶ Department of Financial Services, *Florida Accountability Contract Tracking System Grant Disbursement Information*, <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042> (last visited December 21, 2020).

²⁷ Section 215.555(1)(f), F.S.

²⁸ Chapter 93-409, L.O.F.

²⁹ Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

³⁰ State Board of Administration of Florida, *About the SBA*, <https://www.sbafla.com/fsb/> (last visited December 22, 2020).

³¹ Section 215.555(2)(e), F.S.

³² Section 215.555(4)(a), F.S.

³³ Section 215.555(4)(c)1., F.S.

reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent³⁴ of the reimbursed losses for loss adjustment expenses.³⁵

The FHCF must charge insurers the actuarially indicated premium³⁶ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.³⁷ The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.³⁸

When the moneys in the FHCF are or will be insufficient to cover losses, the law³⁹ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.⁴⁰ Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.⁴¹

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.⁴² Citizens is not a private insurance company.⁴³ Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors⁴⁴ that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the OIR.

³⁴ Section 215.555(4)(b)1., F.S.

³⁵ Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

³⁶ Section 215.555(5)(a), F.S.

³⁷ See State Board of Administration, *Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited December 22, 2020).

³⁸ Section 215.555(2)(a), F.S.

³⁹ Section 215.555(6), F.S.

⁴⁰ Section 215.555(6)(b), F.S.

⁴¹ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).

⁴² Admitted market means insurance companies licensed to transact insurance in Florida.

⁴³ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

⁴⁴ The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴⁵ Assets may not be commingled or used to fund losses in another account.⁴⁶

- **The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.
- **The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.
- **The Coastal Account** offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁴⁷

Citizens Insurance Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351, F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S.⁴⁸ From 2007 until 2020, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.⁴⁹

Citizens Eligibility

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not

⁴⁵ The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁴⁶ Section 627.351(6)(b)2b., F.S.

⁴⁷ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

⁴⁸ Among the factors OIR considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.

⁴⁹ Section 627.351(6)(n)6., F.S.

exceed the Citizens premium by 15 percent or more.⁵⁰ In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Current Citizens policyholders cannot renew a Citizens insurance policy if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.⁵¹

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.⁵² Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Mobile Home Coverage under Citizens

Florida law currently requires Citizens to offer coverage for mobile home dwellings with a minimum insured value of at least \$3,000,⁵³ limited to the primary dwelling and certain attached structures.⁵⁴ Such coverage must include attached screened enclosures, attached carports, and attached patios.⁵⁵ Losses to the mobile home dwelling are adjusted on the basis of actual cash value. The actual cash value of the mobile home is determined by subtracting depreciation from the estimated replacement cost.⁵⁶ Separate from its statutorily mandated mobile home coverage, Citizens automatically includes sinkhole loss coverage in such policies, except for wind-only policies.⁵⁷ Citizens also offers optional coverages for other structures not physically attached to the primary dwelling.⁵⁸ As of January 28, 2021, Citizens insures 70,585 mobile homes across Florida.⁵⁹

III. Effect of Proposed Changes:

Section 1 extends until June 30, 2031, the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA) Division of Emergency Management (DEM). The HLMP funds programs that improve the wind resistance of residences and public hurricane

⁵⁰ Section 627.351(6)(c)5., F.S.

⁵¹ Section 627.351(6)(c)5., F.S.

⁵² Section 10, ch. 2013-60, L.O.F.

⁵³ Section. 627.351(6)(c)(17), F.S.

⁵⁴ Citizens Property Insurance Corporation, *Citizens Mobile Home Policies: Types of Coverage* (August 2019), <https://www.citizensfla.com/documents/20702/31376/Mobile+Home+Policies+Coverage+Types/e61c3b40-50aa-4789-8508-51ad26ac3450> (last visited January 28, 2021).

⁵⁵ Section 627.351(6)(c)(17), F.S.

⁵⁶ See note 55.

⁵⁷ See note 55.

⁵⁸ *Id.*

⁵⁹ Email from Candace Bunker, Director of Legislative and Cabinet Affairs, Citizens Property Insurance Corporation, to Florida Senate Committee on Banking and Insurance (January 28, 2021)

shelters. The HLMP program operations are funded through an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund to the Division of Emergency Management. The HLMP and the associated \$10 million appropriation from the Florida Hurricane Catastrophe Fund are set to expire on June 30, 2021.

Section 2 provides the act takes effect upon become a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate with respect to insurance premiums. A reduction in wind loss attributable to retrofitted tie-downs may be offset by wind loss attributable to carports and sunrooms not constructed to code, which FEMA has concluded as being the primary causes of damage to mobile homes from a wind event.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 215.559 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 2, 2021:

The committee substitute removes a cross-reference to a defunct rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.

B. Amendments:

None.