

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 872

SPONSOR: Senator Latvala and others

SUBJECT: Hurricane Loss Mitigation

DATE: February 17, 1999

REVISED: 3/03/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill creates the Hurricane Loss Mitigation Clearing Trust Fund (HLMCTF) to receive transfers from the Florida Hurricane Catastrophe Fund (Cat Fund) to provide funding for hurricane mitigation programs.

This bill amends section 215.555, F.S., 1998 Supplement, and creates section 215.559, F.S.

## II. Present Situation:

According to the Department of Community Affairs' (DCA) 1998 publication "*Breaking the Cycle*," approximately 80% of Florida's population lives within five miles of the coast, the area most vulnerable to natural disasters. Forty percent of all National Flood Insurance Program flood policies are written in the state and almost 3 million Floridians reside in the projected storm surge zone for category I hurricanes. In recent years, Florida has experienced storms causing severe damage to our coastal communities and because of Florida's unique geographic location, it is anticipated that natural hazards will continue to threaten the state's residents and its infrastructure.

According to the department's Division of Emergency Management, the term "hazard mitigation" is defined as the undertaking of actions which help reduce or eliminate the loss of life and property from future disaster events. Mitigation, along with preparedness, response and recovery, comprises the four phases of emergency management. Proper use of hazard mitigation concepts provides a means by which to break the repetitive cycle of injury, loss of life and property, destruction and rebuilding caused by natural disaster events. Hazard mitigation is needed to ensure that post-disaster repairs, reconstruction and recovery occur after damages are analyzed, and that sounder, less vulnerable conditions are produced. In addition, when hazard mitigation is incorporated into economic or community development goals, it supports the accomplishment of a more comprehensive and effective government.

The following is a brief description of hazard mitigation programs funded in part by the federal government and administered by DCA:

- The **Hazard Minimization Program** offers grants to homeowners to address minor retrofitting, including installing hurricane tie downs or elevating utilities. Local governments are required to provide a 25% match in funds.
- The **Public Assistance Mitigation Program** provides funds to rebuild damaged public infrastructure above current codes and standards to better withstand future hurricanes. Local governments are required to provide a 25% match in funds.
- The **Hazard Mitigation Grant Program** provides funds to support a wide range of projects or programs, including mitigation planning, retrofitting critical facilities, property acquisition or elevation, and minor structural mitigation projects. Local governments are required to provide a 25% match in funds.
- The **Flood Mitigation Assistance Program** provides funds to support planning, the elevation or dry flood proofing of structures, relocation or demolition and minor structural flood control projects.

In 1995, the Federal Emergency Management Agency (FEMA) published the National Mitigation Strategy. The goal of the strategy is to “substantially increase public awareness of natural-hazard risk and - within 15 years - to significantly reduce the risk of loss of life, injuries, economic costs, and disruption of families and communities caused by natural hazards.” The National Mitigation Strategy contains five major elements:

- Hazard identification and risk assessment for each community;
- Applied research and technology transfer to aid development of the best mitigation methods and promote the transfer of that technology to users;
- Public awareness, training and education to create broader public awareness of and support for mitigation;
- Incentives and resources to help communities achieve the goal; and
- Leadership and coordination to promote coordination and cooperation within and between different levels of government and the private sector.

The Cat Fund, pursuant to s. 215.555, F.S., 1998 Supplement, was created by the Legislature in 1993 in response to Hurricane Andrew. The Cat Fund is placed within the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for excess losses due to hurricanes. Two of the factors the Internal Revenue Service found important in granting the tax-exempt status were the Cat Fund’s broad base of participation and the statutory requirement that the Cat Fund pay out \$10 million annually for the mitigation of hurricane losses.

Subsection (7) of s. 215.555, F.S., 1998 Supplement, directs the Legislature, each fiscal year beginning in fiscal year 1997-1998, to appropriate from the investment income of the Cat Fund an amount of no less than \$10 million and no more than 35% 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 programs intended to accomplish the following:

- 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;
- 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.

### III. Effect of Proposed Changes:

**Section 1** names the bill the “Bill Williams Residential Safety and Preparedness Act.”

**Section 2** creates s. 215.559, F.S., to establish the Hurricane Loss Mitigation Clearing Trust Fund (HLMCTF) under the administration of the Comptroller, from funds transferred from the Cat Fund under s. 215.555(7)(c), F.S., 1998 Supplement. Such funds must be used to provide funding for local governments, state agencies, and nonprofit organizations to support programs intended to:

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

The Comptroller is directed to annually transfer CAT fund investment income in the following proportions:

- 85% to the Grants and Donations Trust Fund of DCA, to be used for
  - programs to improve the wind resistance of residences and mobile homes; in the first year of the program, 40% of these funds must be used for programs affecting mobile homes, declining to 30% in the second year, and 20% in the following years;
  - cooperative programs with local governments and the federal government; and
  - other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

These programs are to be developed in consultation with a DCA appointed advisory council, which must include a representative from the Department of Insurance, home builders, insurance companies, the Federation of Mobile Home Owners, and mobile home manufacturers, respectively. Funds used for these purposes may not supplant other funding sources of DCA used for these purposes.

- 5% to the Insurance Commissioners Regulatory Trust Fund, to be used for consumer education, information, and outreach to encourage consumers to take actions that will

reduce their property insurance costs. Funding for media campaigns must be matched by at least an equal amount of in-kind services, with a goal of three times the funds being matched. Funds used for these purposes may not supplant other funding sources of the Department of Insurance used for these purposes.

- 10% to the Operations and Maintenance Trust Fund of the Board of Regents (BOR), to support research and development, including demonstration projects, into hurricane loss reduction devices and techniques for residences and mobile homes. These funds must be matched by at least an equal amount of funds or in-kind services from entities other than the State University System. The BOR must consult with DCA prior to spending these funds.

DCA is required to report to the House and Senate on January 1, 2000, and annually thereafter, on the activities funded by the CAT fund investment income. End of the year trust fund balances must remain in the trust fund and must be available for carrying out the purposes of the trust fund.

Balances remaining in the HLMCTF at the end of any fiscal year must remain in the trust fund and may be available for use in subsequent years.

**Section 3** amends s. 215.555(7)(c), F.S., 1998 Supplement, to delete the specified uses of fund proceeds, which were transferred to s. 215.559, F.S., as created in section 2 of this bill, and to require the transfer of a portion of the investment income from the Cat Fund to the HLMCTF. Annually, \$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 prior year, must be transferred to the HLMCTF. However, the transfer amount “in excess of \$10 million” must be limited if it is found to jeopardize the actuarial soundness of the CAT fund “based on the assumptions contained in the premium formula approved for that year” or if the appropriation “would have an adverse impact on rates.”

**Section 4** provides that the bill is effective upon becoming a law.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Article III, Section 19(f)(1) of the State Constitution states that:

No trust fund of the State of Florida or other public body may be created by law without a three-fifths vote of the membership of each house of the Legislature in a separate bill *for that purpose only*.

SB 872 creates a trust fund, and provides for the funding of the trust fund and use of the trust fund moneys. While there may be some question as to whether this bill violates the constitutional restriction on the creation of trust funds, it appears that the funding and use provisions in the bill do not conflict with the restriction.

In 1996, the Florida Supreme Court considered the case of *American Bankers Insurance Company v. Chiles* (675 So.2d 922 (Fla. 1996)), where the constitutionality of chapter 93-409, L.O.F., was challenged. This law created the Cat Fund, which is funded by assessments on insurers and is administered by the State Board of Administration. The Supreme Court agreed with the decision of the First District Court of Appeal, which concluded that “the Legislature reasonably interpreted the constitutional provision to mean that items related to the purpose, administration, and funding should be included within a bill creating a trust fund. Matters relating to regulation and solvency of the fund clearly fall within the parameters of administration and funding.”

Since the provisions in SB 872 relate only to the “purpose and funding” of the HLMCTF, it appears that the bill does not violate Article III, Section 19(f)(1) of the State Constitution.

#### V. Economic Impact and Fiscal Note:

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

To the extent that the purposes of programs funded by the HLMCTF are successful, homeowners should benefit.

##### C. Government Sector Impact:

As existing housing stock becomes more wind resistant and communities experience less damage after a hurricane, the local government share of the 25 percent match required in order to receive funds from FEMA may be reduced.

Local governments could realize an increase in their tax base as existing housing stock becomes more valuable and more desirable to consumers because of increased wind resistant structures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Comprehensive Planning, Local and Military Affairs Committee:

This amendment requires that the DCA appointed advisory council mobile home manufacturer representative be a representative of the Florida Manufactured Housing Association.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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