HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423 Hurricane Loss Mitigation Program
SPONSOR(S): Tuck
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee		Skinner	Dearden
2) Insurance & Banking Subcommittee			
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund. The FHCP was created in response to the problems that developed in the residential property insurance industry following property losses incurred through a serious 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, but no more than 35 percent, from the investment income of the FHCF from the prior fiscal year. The FHCF appropriation provides funding to state agencies, local governments, public and private 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 financing upgrades; or
- Protect local infrastructure from potential hurricane damage.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP), which is now established under the Division of Emergency Management. The HLMP is funded by the annual appropriation of $10 million from the FHCF. The funds are to be used as follows:

- $3 million is directed towards retrofitting public facilities for use as hurricane shelters.
- $7 million is directed toward programs to improve the wind resistance of residences and mobile homes, educating persons concerning the Florida Building Code 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 funds are further directed as follows:
  - $2.8 million to the Mobile Home Tie-Down Program;
  - $700,000 to the Florida International University center for hurricane research; and
  - $3.5 million to the Hurricane Loss Mitigation Program Retrofit Grant for the purpose of improving community resiliency.

The HLMP expires on June 30, 2021. The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2031.

HB 423 has no fiscal impact on the General Revenue fund. Annually, $10 million is appropriated from the FHFC to the HLMP. Should this bill become law, these funds would continue to be appropriated until June 30, 2031. The bill has an indeterminate but likely positive impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund.[1] The FHCP was created in response to the problems that developed in the residential property insurance industry following property losses incurred through a series 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, enabling 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, creating 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, who serves as chair, the Chief Financial Officer, and the Attorney General.[5]

The private letter ruling[6] issued by the Internal Revenue Service granting tax-exempt status to the FHCF requires 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 no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year. The FHCF appropriation provides funding for state agencies, local governments, public and private 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 financing upgrades; or
- Protect local infrastructure from potential hurricane damage.[8]

In 1999,[9] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA). The HLMP is funded by the annual appropriation of $10 million from the FHCF. The HLMP is now established under the Division of Emergency Management (Division).[10]

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[1] Ch. 93-409, Laws of Fla.
[2] S. 215.555(1)(b), F.S.
[3] S. 215.555(1)(c), F.S.
[4] S. 215.555(1)(e), F.S.
[5] S. 215.555(3), F.S.; Art. IV, s. 4, Fla. Const.
[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*, https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer (last visited February 11, 2021).
[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, available https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20100413_SBA_CATF_Annual_Report.pdf?ver=2016-06-08-121914-787.
[8] S. 215.555(7)(c), F.S
[9] Ch. 99-305, Laws of Fla.
[10] S. 215.559, F.S.

Current law requires the funds to be used as follows:

- Three million dollars ($3 million) is directed towards retrofitting public facilities for use as hurricane shelters. The Division must prioritize funds for projects included in the annual Shelter Retrofit Report and projects in regional planning council areas with shelter deficits.[11]

  In Florida, the deficit of safe[12] public hurricane evacuation space has been significantly reduced.[13] This reduction can be contributed to retrofit projects, the availability of retrofit and mitigation-related funds, existing building surveys, and the application of enhanced hurricane resistance design and construction standards.[14] As of 2020, the amount of available hurricane shelter spaces has increased to 1,060,767.[15] Available hurricane shelter space is projected to increase to 1,120,174 by August 2021.[16]

- Seven million dollars ($7 million) must be used for programs that:
  - Improve the wind resistance of residences and mobile homes, through loans, subsidies, grants, demonstration projects, and direct assistance;
  - Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and
  - Prevent or reduce losses or costs of rebuilding after a disaster.[17]

Of the $7 million allocated to the uses described above:

- Forty percent ($2.8 million) is directed to the Mobile Home Tie-Down Program.[18] This program is administered by Tallahassee Community College (TCC) and are used to mitigate future losses for mobile homes and to provide tie-downs for mobile homes in communities throughout the state.[19]

  Over the years, the Mobile Home Tie-Down Program has been reviewed and audited. In 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited the Mobile Home Tie-Down Program and determined that a contractual agreement should exist between the Division and TCC.[20] The Bureau determined an agreement is required due to the funds being classified as "grant and aid."[21] The Bureau recommended a written agreement that incorporates the relevant statutory requirements, a clear scope of work, deliverables, monitoring, and financial consequences.[22] The Division and TCC subsequently executed a written agreement for the program that incorporated the Bureau's recommendations, including a scope of work.[23] The program's scope of work requires the mobile home tie-down improvements under this program to meet or exceed the standards

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11 S. 215.559(1)(b), F.S.
12 "'Safe' is defined as meeting the intent of American Red Cross (ARC) Hurricane Evacuation Shelter Selection Standards (June 2018)." Florida Division of Emergency Management, *2020 State Retrofit Report* (Nov. 2020), https://portal.floridadisaster.org/shelters/External/Current/2020%20SRR/2020%20Shelter%20Retrofit%20Report.pdf (last visited Feb. 12, 2021).
13 *Id*.
14 *Id*.
15 *Id.*
16 *Id*.
17 S. 215.559(1)(a), F.S.
18 S. 215.559 (2)(a), F.S.
19 Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2020 Annual Report* (Jan. 1, 2021), https://portal.floridadisaster.org/mitigation/HLMP/Internet%20Documents/Reports/2020%20HLMP%20Annual%20Report.pdf (last visited Feb. 12, 2021).
20 *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 Feb. 12, 2021).
21 *Id.*
22 *Id*.
23 *Id*.

established in Rules 15C-1.0101 through 15C-1.0109, F.A.C.[24] However, the program is not intended to bring the entire existing mobile home up to building code standards.[25]

In FY 2019-20, ten counties (Manatee, Pinellas, Hillsborough, Volusia, Palm Beach, Charlotte, Brevard, Highlands, Collier, and Pasco) benefitted from the Mobile Home Tie-Down Program. A total of 1,702 manufactured or mobile homes were retrofitted.[26] Currently, the program is not accepting new applications, as the waiting list exceeds five years; new applications will be accepted once the waiting list is reduced to three years.[27]

- Ten percent ($700,000) is directed to the Florida International University (FIU) center for hurricane research.[28]

  Research conducted by FIU during Fiscal Year 2019-2020 included:
  - Experimental and Analytical Assessment of Effects of Leakage around Doors, Windows, and Other Openings on Internal Pressures in Residential Buildings;
  - Numerical and Experimental Investigation to Codify Wind Pressure Distribution of Elevated House;
  - Codification Wind-induced Loads on Irregular Shaped Buildings;
  - Development of integrated storm tide and freshwater flooding model Phase 3;
  - Investigation and Incorporation of WOW testing outputs in the Florida Public Hurricane Loss Model; and
  - Education and Outreach Programs to Convey the Benefits of Various Hurricane Loss Mitigation Devices and Techniques.[29]

- The remaining 50 percent ($3.5 million) is used to fund the Hurricane Loss Mitigation Program Retrofit Grant (Grant) for the purpose of improving community resiliency.[30] Funded activities include inspections, retrofits, and construction or modification of building components designed to increase a structure's ability to withstand hurricane conditions.[31]

  Under this Grant, eligible applicants are nonprofit organizations, qualified for-profit organizations, and governmental entities.[32] Homeowners are not eligible, but may partner with an eligible local government.[33] In FY2020, sixteen recipients received the grant to conduct wind mitigation retrofits to homes. These recipients included:
  - City of North Lauderdale;
  - City of Bradenton;
  - City of Deerfield Beach;
  - Rebuild Northwest Florida;
  - St. Lucie County;
  - Centro-Campesino;
  - Crisis Housing Solutions;
  - Flagler County;
  - Lake and Sumter County Emergency Response;
  - City of Lauderdale Lakes;

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[24] Department of Financial Services, *Original Contract - D9042 (executed Aug. 7, 2018)*, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042 (last visited Feb. 12, 2021).
[25] 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 Feb. 12, 2021).
[26] Florida Division of Emergency Management, *supra* note 20.
[27] 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 Feb. 12, 2021).
[28] S. 215.559(3), F.S.
[29] Florida Division of Emergency Management, *supra* note 20.
[30] Florida Division of Emergency Management, *Hurricane Loss Mitigation Program*, https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited Feb. 12, 2021).
[31] *Id*.
[32] *Id.*
[33] *Id*.

- Broward County;
- Miami-Dade County;
- City of Pompano;
- City of Carrabelle;
- Franklin County; and
- Emerald Coast Regional Planning Council.[34]

Seven additional projects were funded that did not involve residential wind retrofitting.[35] These projects comprised the following: flood mitigation, public wind retrofit, group home wind mitigation, storm-water drainage, and water-pump station hardening.[36]

Current law requires the Division, with the exception of the hurricane research program conducted by FIU, to develop these programs in consultation with an advisory council (Council).[37] The Council also reviews and approves FIU's hurricane research work plan.[38] The Council must consist of:

- 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; and
- A representative designated by the Florida Manufactured Housing Association.[39]

The Division is required to submit a full report and evaluation of these activities on January 1st each year.[40] 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.[41] The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[42] The recommendations may be used by insurers for potential discounts or rebates.[43]

Below are the Hurricane Loss Mitigation Program Activities for FY 2019-20:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2019-20[44]	
Shelter Retrofit Program	$3,000,000
HLMP Retrofit Grant	$3,500,000
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$10,000,000**

The Hurricane Loss Mitigation Program expires on June 30, 2021.[45]

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34 *Id*.
35 *Id.*
36 *Id*.
37 S. 215.559(4), F.S.
38 S. 215.559(3), F.S.
39 S. 215.559(4), F.S.
40 S. 215.559(6), F.S.
41 *Id*.
42 *Id*.
43 *Id.*
44 Florida Division of Emergency Management, *supra* note 20.
45 S. 215.559(7), F.S.

Effect of Proposed Changes

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2031.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.559, F.S., relating to Hurricane Loss Mitigation Program.

Section 2: Provides this act shall take effect upon becoming a law.

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, 2031.

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. However, the impact on the private sector is indeterminate.

D. FISCAL COMMENTS:

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

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES