SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: SB 10-A

SPONSOR: Senator Garcia

SUBJECT: Hurricane Deductibles for Residential Insurance Policies

DATE: December 13, 2004 REVISED: 12/14/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich/Knudson	Deffenbaugh	BI	**Fav/ 7 amendments**
2.			GA	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- [X] Technical amendments were recommended
- [X] Amendments were recommended
- [ ] Significant amendments were recommended

I. Summary:

This bill appropriates up to $150 million from the Florida Hurricane Catastrophe Fund for the Department of Financial Services to reimburse residential property insurance policyholders whose property was damaged by two or more hurricanes and whose insurer applied more than one hurricane deductible, up to specified limits. The bill also requires that residential policies issued on or after May 1, 2005, apply the hurricane deductible on an annual basis, to all hurricanes that occur during the calendar year.

The 2004 hurricane season has been particularly destructive for Florida, with Hurricanes Charley, Frances, Ivan, and Jeanne causing extensive damage throughout the state. According to the Office of Insurance Regulation (OIR), as of December 2, 2004, insurance companies have reported over 1.5 million property insurance claims for all four hurricanes and $10.5 billion in total claims payments. The companies estimate that the total expected gross property loss will reach $20.8 billion.

Residential hurricane deductibles are typically 2 percent of policy limits and may generally be as high as 5 percent of policy limits, or even higher for certain policies. However, $500 hurricane deductibles are still prevalent for homes and mobile homes valued under $100,000. The deductible applies to each hurricane, which can result in significant out-of-pocket expense to many policyholders.

According to a survey of insurers by OIR, it appears that in most or many cases of multiple hurricane claims, the insurer waived application of multiple deductibles. But, using the survey results and attempting to account for missing information, committee staff estimates that about 36,000 policies had multiple deductibles applied and that the cost to policyholders of second and subsequent deductibles may total about $70 million. But this estimate apparently includes only policies for which insurers paid two or more claims and deducted the full amount of the deductible, and does not include “no payment” claims below the deductible or claims not reported to the insurer.

This bill requires the Department of Financial Services (department) to reimburse policyholders for the financial loss due to the insurer applying multiple hurricane deductibles, based on legislative findings that such state action is a valid and necessary public purpose. The reimbursement program applies to residential property insurance policies, including both personal and commercial residential policies, under specified conditions and limitations:

- A policyholder must have incurred damage in excess of the full amount of one deductible (which may be met by adding two or more claims below the deductible).
- Maximum reimbursement of $10,000 per policy, or $20,000 per policy if damaged by three or more hurricanes.
- Maximum reimbursement for a condominium association policy in amount up to $3,000 per unit.
- $100 deductible applied to the reimbursement.
- Applications for reimbursement must be filed with the department by March 1, 2005, including such information as the department requires to verify the claim, including documentation from the insurer.
- Department may investigate and adjust reimbursement claims, and may contract for this service.
- Applications for reimbursement are subject to insurance fraud penalties.
- Insurers must mail notice of the reimbursement procedures to policyholders who had more than one hurricane deductible applied.
- Total amount paid to all policyholders is limited to the amount appropriated. Department must first pay policyholders who received claims payments for two or more hurricanes for which each payment was reduced by the full amount of the deductible. All other eligible policyholders would be paid on a pro rata basis if funding is inadequate to pay everyone in full.
- Up to $150 million is transferred from the Florida Hurricane Catastrophe Fund (FHCF) to the department’s Insurance Regulatory Trust Fund and appropriated for reimbursement. In order to maintain actuarially indicated premiums, the State Board of Administration must increase future premiums to insurers for FHCF coverage over 5-year period.

The bill also requires residential property insurers to apply future hurricane deductibles on an annual basis to all hurricanes that occur during the calendar year. The annual deductible applies to losses that are covered under one or more policies issued by the same insurer or an insurer in the same insurer group. However, insurers may apply the “other perils” deductible, or the remaining amount of the hurricane deductible, whichever is greater, to subsequent hurricane losses. Insurers may require policyholders to report claims below their deductible and to maintain records or receipts in order to apply the loss to a subsequent hurricane. If a policyholder has a hurricane loss and then changes the hurricane deductible, the highest deductible applies. These requirements apply to policies issued or renewed on or after May 1, 2005.

This bill substantially amends section 627.701 of the Florida Statutes. The bill also creates undesignated sections of the Florida Statutes.

II. Present Situation:

The 2004 Hurricane Season

The 2004 hurricane season has been particularly destructive for Florida, with Hurricanes Charley, Frances, Ivan, and Jeanne causing extensive damage throughout the state.[1] According to the Office of Insurance Regulation (OIR), as of December 2, 2004, insurance companies have reported over 1.5 million property insurance claims for all four hurricanes and $10.5 million in total claims payments. The companies estimate that the total expected gross property loss will reach $20.8 billion. This figure includes residential, commercial, and auto losses, but not National Flood Insurance Program losses. But, the $20.8 billion in gross property loss also includes the amount of loss below the deductible (not paid by the insurer), which is estimated to be $1.6 billion for residential deductibles, plus an unreported amount for non-residential (commercial and auto) deductibles.[2]

The Insurance Information Institute has projected that the number of claims will total 2.1 million with expected gross insured property losses to climb to more than $20 billion. These amounts exceed those for Hurricane Andrew in 1992 for which there were a total of $15.5 billion in losses and 795,912 claims.[3]

There is an estimated $12.7 billion in residential losses, based on preliminary loss reports filed by residential insurers with the Florida Hurricane Catastrophe Fund (FHCF) as of November 22, 2004. This compares to the $14.5 billion in residential losses that were estimated, based on an average of four hurricane models.[4] However, the preliminary loss estimates filed by insurers with

[1] According to the Florida Hurricane Catastrophe Fund, four major hurricanes impacting the state during one hurricane season is an event which occurs once in every three hundred years. The four hurricanes occurred within 45 days of each other. Hurricane Charley made landfall on August 13, 2004, with wind speeds of 145 miles per hour – a Category 4 hurricane. Hurricane Frances had wind speeds of 105 miles per hour at landfall on September 4, 2004, as a Category 2 hurricane. Hurricane Ivan on September 16, 2004, and Hurricane Jeanne on September 26, 2004, were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The Governor issued orders declaring a state of emergency during this period and the President of the United States declared most of Florida a federal disaster area. (Executive Orders Issued: 04-182, 04-192, 04-206, and 04-217.) On September 9, 2004, the Governor issued a supplemental order pertaining to Hurricane Frances (04-192).

[2] "*Residential coverage*" includes both personal lines residential coverage, which includes homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies, and commercial lines residential coverage, which includes condominium associations, cooperative associations, apartment buildings, and similar policies, including policies covering the common elements of a homeowners' association (s. 627.4025(1), F.S.).

[3] Fla. Dept. of Insurance Hurricane Andrew Quarterly Report for the Quarter Ending March 31, 1994. However, the total cost of Andrew is approximately $20.5 billion in current dollar insured losses.

[4] As reported by Jack Nicholson, Senior FHCF Officer, State Board of Administration, to the Senate Banking and Insurance Committee on December 1, 2004. The four models that were averaged were Applied Industry Research (AIR), EQECAT,

the FHCF are subject to change as more information becomes available and losses develop, which is also true for the claims reports filed by insurers with OIR.

The specific number of claims reported, amount of claims payments, and expected gross property losses for each hurricane as reported to OIR for the reporting period ending December 2, 2004, are as follows:

- Hurricane Charley:
  Claims reported: 447,615
  Claim payments: $4,508,378,789
  Expected gross property losses: $7,834,195,285

- Hurricane Frances:
  Claims reported: 499,553
  Claim payments: $3,244,778,545
  Expected gross property losses: $4,804,891,389

- Hurricane Ivan:
  Claims reported: 192,726
  Claim payments: $1,274,111,076
  Expected gross property losses: $4,037,933,073
- Hurricane Jeanne:
  Claims reported: 384,187
  Claim payments: $1,536,331,640
  Expected gross property losses: $4,131,941,242

- Total of Four Hurricanes:
  Total claims reported: 1,524,081
  Total claim payments: $10,536,331,640
  Total expected gross property losses: $20,808,960,988

Hurricane Deductibles Allowed in Florida (s. 627.701, F.S.)

Almost all insurance policies contain a deductible—a set portion of an insured loss to be borne by the insured before he is entitled to recovery from the insurer.[5] Deductibles serve multiple purposes. First, they lower the exposure to loss for the insurer and, thereby, lower the premium to the policyholder. The higher the deductible, the lower the premium. Deductibles also eliminate small claims that may be inefficient or cost-prohibitive for the insurer to investigate or adjust. Deductibles also provide a financial incentive to policyholders to prevent loss and to mitigate damage, which further acts to lower the insurer's losses and premiums. This similarly acts as a financial disincentive for fraud, as in the case of a policyholder that may be tempted to damage or destroy insured property and to collect the full value of the loss.

Risk Management Services (RMS), and Applied Research Associates (ARA). Only three models (AIR, EQECAT, and RMS) were used for Hurricanes Ivan and Jeanne.
[5] Deluxe Black's Law Dictionary 6th Ed, pg. 413.

Property insurance policies typically have separate hurricane deductibles that are calculated as a percentage of a home's insured value or as a flat dollar amount and are higher than for other causes of loss, such as fire and theft. The Legislature first authorized the use of separate hurricane deductibles in 1993, after Hurricane Andrew, and subsequently amended the law in 1995, 1996, and 1997.[6] Higher hurricane deductibles were authorized in order to limit premium increases for hurricane property insurance and increase the availability of such coverage in Florida.[7] The hurricane deductible is triggered when windstorm losses result from any one storm declared to be a hurricane by the National Hurricane Center of the National Weather Service.[8] They take effect "at the time a hurricane watch or warning is issued for any part of Florida" and remain in effect "for the time period during which the hurricane conditions exist anywhere in Florida" and ending "72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida."[9] Wind damage from storm systems other than declared hurricanes is not subject to a hurricane deductible, but to the general all peril deductible.

Section 627.701, F.S., establishes the maximum and minimum hurricane deductibles that are allowable and mandates that insurers offer hurricane deductibles of specified amounts. These requirements apply only to residential property insurance policies and vary depending on the insured value of the home or other residential structure, as displayed in Table 1, below.

Table 1. Current Requirements for Residential Hurricane Deductibles (s. 627.701, F.S.)

Dwelling Limits	Minimum Deductible Allowed	Maximum Deductible Allowed**	Specific Mandatory Offerings
0-$25,000	$250.00	2%	None
$25,000-50,000	$250.00	2%	$500 & 2%
$50,000-100,000	$500.00	2%	$500 & 2%
$100,000-250,000	$500.00	5%	2% (and $500*)
$250,000-500,000	$500.00	5%	2%
$500,000 and up	$500.00	Unlimited	2%

*For houses valued between $100,000 and $250,000, an insurer is not required to offer the $500 deductible if it guarantees it will not nonrenew to reduce potential loss from hurricanes for one additional renewal period. As interpreted by OIR, this guarantee had to be provided for only one renewal period, after April 1, 1996, and thereafter the insurer is no longer required to offer the $500 deductible (s. 627.701(3)(b), F.S.; OIR interpretation provided to committee staff)

***Commercial Residential Policies*: For all values, a 5 percent maximum deductible is allowed for condominium association and cooperative association policies and a 10 percent maximum

[6] Chapters 93-410, 95-276, 96-194, and 97-55, Laws of Florida.
[7] L.O.F. Ch. 96-194, s. 12.
[8] Section 627.4025(2)(c), F.S. "*Hurricane coverage*" is coverage for loss or damage caused by the peril of windstorm during a hurricane. The term includes ensuing damage to the interior of a building, or to property inside a building, caused by rain, snow, sleet, hail, sand, or dust if the direct force of the windstorm first damages the building, causing an opening through which rain, snow, sleet, hail, sand, or dust enters or causes damage (s. 627.4025(2)(a), F.S.). "*Windstorm*" means wind, wind gusts, hail, rain, tornadoes, or cyclones caused by or resulting from a hurricane which results in direct physical loss or damage to property (s. 627.4025(2)(b), F.S.).
[9] Section 627.4025(2)(c), F.S.

deductible is allowed for other commercial lines residential policies (e.g., apartment buildings). The insurer must offers a 3 percent deductible. (s. 627.701(8), F.S.).

"Grandfather" Exception: Notwithstanding the hurricane deductible limits summarized above:

- An insurer may require higher deductibles than shown above if a risk was covered on August 24, 1992, under a policy having a higher deductible than allowed by the above limits. (s. 627.701(3)(a), F.S.)
- An insurer is not required to offer either the $500 or 2 percent deductible with respect to a deductible program lawfully in effect in effect on June 14, 1995, or any similar deductible program, that requires a minimum deductible amount of at least 2 percent of policy limits. (s. 627.701(3)(b)2. F.S.)

Mobile Homes: Hurricane deductibles for a mobile home property insurance policy:

- may not exceed 5 percent of the property value if the property is subject to any liens, and
- may not exceed 10 percent of the property value if the property is not subject to any liens.

Other Perils (non-hurricane): Policies must offer a $500 deductible for all perils other than hurricane. (s. 627.701(6), F.S.)

Copayment Provision: In addition to authorized deductible amounts, an insurer may also offer policies with a copayment provision under which, after exhaustion of the deductible, the policyholder is responsible for 10 percent of the next $10,000 of insured hurricane losses. (s. 627.701(3)(a), F.S.) However, it appears that residential policies do not have this provision.

"Secured Deductible": Hurricane deductibles up to 10 percent are allowed (after a $500 deductible and 10 percent policyholder copayment for the next $5,000) if the policyholder provides a certificate of security, such as a line of credit, to cover the amount of the deductible. (s. 627.701(5), F.S.) However, it appears that residential policies do not have this type of deductible.

Required Policy Language for Hurricane Deductibles: Any policy that contains a separate hurricane deductible must on its face include in boldfaced type no smaller than 18 points the following statement: "THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

Deductible Applies Per Hurricane: The legislative history of the hurricane deductible statute indicates that the issue of the deductible applying to each hurricane, rather than applying on an annual basis to all hurricanes during the year, was never an issue that was specifically considered. The language of the statute does not expressly state that the deductible applies per hurricane, but property insurance deductibles (in contrast to health insurance deductibles) have commonly applied on a per occurrence basis and apply, for example, to each hurricane, fire, theft, or other risk insured, as specified in the policy. More generally understood is the collision (property) coverage of an auto policy for which the deductible applies to each accident. The possibility of a single home having two or more hurricane losses in the same year and the potential financial impact on policyholders may not have been contemplated.

Hurricane Deductibles Currently Purchased

Detailed information on hurricane deductible amounts in current residential policies are available from reports that residential property insurers must file with the Florida Hurricane Catastrophe Fund . as summarized in the tables below.

Table 2. Current Hurricane Deductibles for Homeowner Policies

Deductible Amount	Number of Homes	Percentage of Homes	Average Insured Value
$1 to $500	657,612	15.9%	$185,401
2%	3,148,586	76.0%	$293,339
5%	211,757	5.1%	$441,905
Other deductibles	124,467	3.0%	
Total	4,142,422	100%	

As shown above, a great majority (76 percent) of homeowner policies in the state have a 2 percent deductible, with such homes having an average insured value of $293,339. At this average value, a 2 percent deductible is $5,867, or the out-of-pocket expense from a full deductible for each hurricane loss. The second most common deductible amount is a $500 or less deductible, purchased by 15.9 percent of policyholders who have an average exposure of $185,401. The third most common deductible is a 5 percent deductible, obtained by 5.1 percent of policyholders who have an average insured value of $441,905. At this value, the deductible would be $22,095 for each full deductible.

Table 3. Current Hurricane Deductibles for Mobile Home Policies

Deductible Amount	Number of Mobile Homes	Percentage of Mobile Homes	Average Insured Value
$0	2,838	0.5%	$9,454
$1 to $250	11,027	2.0%	$25,710
$251 to $500	373,224	66.3%	$59,405
Greater than $500	58,353	10.4%	$67,865
2%	58,004	10.3%	$63,798
5%	39,830	7.1%	$96,584
10% or greater	19,540	3.5%	$79,845
Other deductibles	216	0%	
Total	563,032	100%	

Over two-thirds of the mobile homes have a deductible of $500 or less, generally for lower value homes. An additional 10.4 percent of mobile homes have a dollar deductible greater than $500. A 2 percent deductible is purchased for 10.3 percent of mobile homes with an average insured value of $63,798, which equals an average deductible of $1,276. It is interesting to note that despite the law allowing for higher maximum deductibles for mobile homes than for homeowner policies generally, and no requirements for mandatory offers, insurers and mobile homeowners have elected to continue the use of relatively low hurricane deductibles, particularly for lower value homes. However, the maximum allowable 5 percent deductible (if there is a lien) applies to 7.1 percent of mobile homes, with an average insured value of $96,584, amounting to an average deductible of $4,829. The maximum allowable 10 percent deductible (if no lien) is purchased by 3.5 percent of mobile homeowners, who have an average insured value of $96,584, for an average deductible of $9,658.

Table 4. Current Hurricane Deductibles for Condominium Unit Owner Policies

Deductible Amount	Number of Condominium Units	Percentage of Condo. Units	Average Insured Value
$1 to $500	381,339	54.7%	$74,763
$501 to $1,500	24,190	3.5%	$103,349
$1,501 to $2,500	1,801	0.3%	$147,761
2%	283,776	40.7%	$103,916
5%	3,285	0.5%	$306,922
15% or greater	2,306	0.3%	$438,058
Other deductibles	1,025	0.2%	
Total	697,722	100%	

For condominium unit owner policies (which generally cover only the contents, wall and floor coverings, and appliances), most policies (54.7 percent) have a deductible of $500 or less, and most of the rest (40.7 percent) have 2 percent deductible policies. Less than 1 percent of condominium unit owners have a percentage deductible greater than 2 percent.

Even lower deductible amounts are typical for tenants and other contents policies, as shown in Table 5, below, with 92 percent having a hurricane deductible of $500 or less.

Table 5. Current Hurricane Deductibles for Tenants/Other Contents Policies

Deductible Amount	Number of Tenant Policies	Percentage of Tenant Policies	Average Insured Value
$0	204,562	37.0%	$30,747
$1 to $500	304,204	55.0%	$31,396
$500 to $1,500	12.510	2.3%	$61,239
2%	29,896	5.4%	$61,493
5%	650	0.1%	$70,700
Other deductibles	1,079	0.2%	
Total	552,901	100%	

The remaining residential category is commercial residential, which includes condominium associations, apartment buildings, and homeowners associations, shown in Table 6, below.

Table 6. Current Hurricane Deductibles for Commercial Residential Policies

Deductible Amount	Number of Commercial Policies	Percentage of Commercial Policies	Average Insured Value
$1 to $500	657,612	15.9%	$185,401
$501 to $1,500	76,422	1.8%	$304,558
$1,501 to $2,500	7,150	0.2%	$589,262
Greater than $2,500	3,529	0.1%	$2,304,284
1%	24,240	0.6%	$341.010

2%	3,148,586	76%	$293,339
3%	927	0.02%	$529,480
5%	211,757	5.1%	$441,905
10% to 14%	1,537	0.04%	$1,599,783
15% or greater	1,765	0.04%	$2,068,549
Other deductibles	8,897	0.2%	
Total	4,142,422	100%	

Table 5 shows that 76 percent of commercial residential policies have a 2 percent deductible -- the same percentage as homeowner's policies. But, the average insured value of $293,339 for the 2 percent deductible policies indicates that many are likely to be for rental houses or small apartment buildings. The highest average insured values in Table 6, though small in total number, have dollar deductibles of greater than $2,500 or a percentage deductible of 10 percent to 15 percent, or greater.

Impact of Deductibles on Insurers and Policyholders in Florida for 2004 Hurricanes

Impact on Insurers: Percentage hurricane deductibles can have a significant impact on reducing insurers' hurricane losses. Committee staff requested the Florida Hurricane Catastrophe Fund to provide estimates of the amount of insured residential losses eliminated by the deductibles for the 2004 hurricanes. The FHCF provided modeled estimates (not based on actual loss reports), for each of the four hurricanes, which estimates that total insured residential losses were reduced by 16.8 percent, as detailed in Table 7. This amounts to about $2.6 billion in deductible losses paid by policyholders.

Table 7. Modeled Residential Losses Eliminated by Deductibles

Hurricane	Expected Loss		Percentage of Loss Eliminated by Deductible
	Before Deductible	After Deductible	
Hurricane Charley	$4,669,046,149	$3,825,321,591	18.1%
Hurricane Frances	$3,276,860,006	$2,600,409,840	20.6%
Hurricane Ivan	$3,619,211,207	$3,334,045,102	7.9%
Hurricane Jeanne	$3,892,504,897	$3,096,250,357	20.5%
Total	**$15,457,622,259**	**$12,856,026,890**	**16.8%**

Source: Florida Hurricane Catastrophe Fund

As previously noted, claims reports filed by insurers with the OIR, estimate that expected gross residential property losses will be reduced by $1.6 billion due to deductibles. This is lower than the $2.6 billion modeled estimate in Table 7 (the difference between the "before deductible" and "after deductible" totals). Two possible reasons for this are: 1) insurers do not report losses under a deductible that are not filed as insurance claims with the insurer; and 2) insurers have waived multiple deductibles for some multiple storm claims, which the model may not have assumed. There are likely to be other reasons as well.

Impact on Policyholders: Many parts of the state were struck by multiple hurricanes, a highly unlikely occurrence. This resulted in potentially large, unexpected, out-of-pocket costs for many homeowners in Florida, particularly those in the remarkably similar path of Hurricanes Frances and Jeanne and where these two storms crossed the path of Hurricane Charley. Homeowners hit by more than one hurricane discovered that the hurricane deductible applied to each hurricane, depending on how the insurer adjusted the damage. Since hurricane deductibles are typically 2 percent of policy limits and may generally be as high as 5 percent, application of the deductible two or more times can be a very significant expense.

According to a survey of insurers by OIR, at least 30,000 homes and other residential structures were damaged by two or more hurricanes for which insurers required policyholders to pay for two or more hurricane deductibles. But, caution must be taken in interpreting these survey results, which insurers were required to complete in a short time frame and for which their method of answering and even interpreting the questions are likely to have varied.

It appears that in many cases, insurers have waived the application of a second deductible for claims filed for two or more hurricanes. This appears to be reflected in the survey results and is consistent with statements by insurance company representatives and state regulators. This was reportedly done in cases where the insurer was not able to distinguish the amount of the damage caused by each storm. This would particularly be likely if the insurer did not send an adjuster to the home by the time the damage from the second hurricane occurred. Some insurer representatives have stated that if the damage from the second storm exacerbated the damage from the first storm, but could not be distinguished with any reasonable degree of accuracy, then only one deductible would be applied. This may also benefit the insurer, which may be able to collect additional reinsurance payments, including recoveries from the FHCF, by counting the losses as a single hurricane loss. In addition, state regulators have encouraged insurers to waive deductibles.

Table 8, below, is the OIR analysis of its multiple deductible survey, as submitted by insurers on November, 18, 2004, with certain information updated as noted:

TABLE 8
2004 Hurricane Season (Charley, Frances, Ivan & Jeanne)
Multiple Deductible Analyses by OIR

Total Number of Claims filed--Residential	1,193,030 (as of 10/31/2004)
Total Number of Claims--All Policy Types	1,518,104 (as of 12/02/2004)
Residential Claims as a percentage of all claims	79%
Total Number of Residential Property Policies with:	
2 Hurricane Claims	99,479
3 Hurricane Claims	5,186
4 Hurricane Claims	100
Total Number of Residential Policies with Multiple Claims:	**104,765**
Total Number of Residential Property Policies for which Insurer Applied:	
2 Deductibles	28,197
3 Deductibles	911
4 Deductibles	4

Total Number of Residential Policies Where Insurer Applied Multiple Deductibles:		**29,112**
Estimated 1st Deductible for Multiple Deductible Claimants:	$158,347,090	
Estimated 2nd and subsequent deductibles waived by insurer:	$21,925,765	
Estimated 2nd and subsequent deductibles to be paid by Policyholders (excludes amounts waived by insurer):		**$62,558,079**
Estimated total of all deductibles for all residential claims reported to date: (as of 12/02/2004)	1,655,943,098	

Note 1: The figures above are preliminary based upon claims in various stages of adjudication. The 2nd, 3rd and 4th storms are 79, 67 and 58 days old, respectively, and therefore the application of a multiple deductible is subject to change.
Note 2: The above represents in excess of 90 percent of residential property claims reported.
Note 3: Certain insurers were able to provide values for the number of policies having filed more than one claim, however, the insurers indicated at this time they are not able to determine the value of the deductibles for these claims.
Note 4: The $62.5 million estimated dollar amount of second and subsequent deductibles to be paid by policyholders includes the estimate by Citizens Property Insurance Corp. of approx. $7 million that was not included in a previous OIR analysis. However, Citizens did not estimate the number of policies to which this applies, so the estimated total number of policies (29,112) did not change.

Not all insurers surveyed provided an estimate of the number of policyholders who have paid a second or subsequent deductible, yet some of these insurers estimated the dollar amount of the second and subsequent deductible paid by the policyholder (such as Citizens; see Note 4 to the table). Using the survey results and attempting to account for the missing information, committee staff estimates that approximately 7,000 additional policies, or about 36,000 policies may have had multiple deductibles applied and that the cost to policyholders may total about $70 million, rather than $62.5 million. But even these higher estimates may be low due to the method insurers used to answer the survey. According to insurer representatives contacted by staff, the dollar amounts reported for multiple deductibles paid by policyholders included only policies for which the insurer paid two (or more) claims and deducted the full amount of the deductible. It did not include policies where the insurer made no payment for a claim that was under the deductible and, of course, does not include amounts for claims below the deductible that the policyholder did not report to the insurer.

A further caveat is that the $21.9 million estimate of the amount of the second and subsequent deductibles waived by the insurer is likely to be very low or simply cannot be estimated, since most insurers did not answer this question or answered it as zero.

With these qualifications in mind, the survey indicates that the average cost to policyholders of paying the second and subsequent deductibles (using the higher committee staff estimates) is about $1,900 to $2,000 per policyholder ($70 million divided by 36,000 = $1,944).

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or fund) was created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers (s. 215.555, F.S.). The fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage, typically 90 percent, of hurricane losses above the insurer's retention (deductible). Legislation in 2004 increased the maximum amount the FHCF must pay in any one year to $15 billion, to be adjusted annually based on the percentage growth in exposure, but not to exceed the dollar growth in the cash balance of the fund. The 2004 act also lowered the total industry retention to $4.5 billion, also adjusted annually based on the fund's exposure (regardless of any change in the fund's cash balance).

The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided. The fund derives its revenue from actuarially determined "reimbursement premiums" paid by insurers. The insured value for each insurer is reported annually to the FHCF and the insurer's premium is based on the location of the risk, the construction type, and the deductible level. Computer models are used to derive loss costs for the development of the premium formula. The annual premium charged to insurers generally equals the average annual expected hurricane loss to be paid by the fund to the insurer, plus annual administrative expenses of the SBA, plus amounts appropriated from the fund by the Legislature, and discounted for expected investment income. Each insurer's FHCF coverage limit is its pro rata share of the $15 billion limit, based on the insurer's pro rata share of total FHCF premiums. Each insurer's retention is its same pro rata share of the $4.5 billion industry-wide retention.

The FHCF is authorized to levy assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation and, for the next three years, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. Annual assessments (which have never been levied) are capped at 6 percent of premium with respect to losses from any one year and a maximum of 10 percent of premium to fund hurricane losses from multiple years.

By providing an additional source of reinsurance to what is available in the private market, the law enables insurers to write more residential property insurance in the state than could otherwise be written, and since it is significantly less expensive than private reinsurance, it also acts to lower residential property insurance premiums for consumers.

For the current 2004/2005 contract year, the $15 billion of capacity consists of $6.12 billion in projected year-end cash balance (before losses) and $8.88 billion in bonding capacity. If the cash balance is not sufficient to cover losses, the law requires the issuance of revenue bonds which would be funded by emergency assessments on property and casualty policyholders. Based on preliminary loss reports by insurers to the FHCF for the 2004 hurricane season, the fund will pay approximately $2.1 billion, well below its $6.12 cash balance, making bonding unnecessary. Each insurer's retention must be met for each hurricane, which limits the fund's losses for multiple hurricanes, just as per hurricane deductibles have limited direct losses for insurers. However, the loss estimates for the FHCF are still preliminary and as losses develop, the actual payments may exceed the current estimates. For example, according to the SBA, if insurers' residential losses increase by 20 percent, the fund will pay about $3.0 billion, and if their losses increase by 70 percent, the fund would pay just in excess of its entire cash balance of $6.1 billion.

The law requires the Legislature to annually appropriate from the FHCF at least $10 million, but not more than 35 percent of the fund's investment income from the prior fiscal year, for public programs intended to reduce potential hurricane losses and related programs. The Legislature has appropriated $10 million from the FHCF each year beginning in 1997, except for 2001 when $30 million was appropriated, and 2002 when approximately $19 million was appropriated.[10]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is the state-created insurer of property insurance for persons who cannot find coverage in the voluntary market. Citizens is the largest insurer in Florida for hurricane risk, which replaced the former Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property & Casualty Joint Underwriting Association (RPCJUA). Citizens' High-Risk Account, the former FWUA, provides windstorm coverage only, in most coastal areas of the state. Citizens also provides full residential property coverage statewide, like the former RPCJUA, including both personal and commercial residential policies. The number of policies and insured value of Citizens have continued to grow. As of October 31, 2004, Citizens insured approximately 882,303 policies.

Citizens is generally required to charge the highest premiums in each county, compared to the top 20 insurers in the state, but if it does not have adequate resources to pay claims, it may levy regular assessments against property insurers of up to 10 percent of premiums written in the state for the prior year. If the deficit exceeds this amount, Citizens may levy emergency assessments on property insurance policyholders equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for insurance. Emergency assessments may be pledged to support a bonds or other debt financing obtained by Citizens to pay claims if a deficit exists.

For the 2004 hurricane season, Citizens has estimated that it has approximately $1.4 billion in total losses for the four hurricanes, based on a loss summary provided to the Banking and Insurance Committee as of November 15, 2004. Previously modeled storm losses projected about $1.8 billion in total losses for Citizens. Based on the modeled loss estimates, a preliminary estimate by Citizens is that its high-risk account will have about a $292 million deficit on December 31, 2004. It is not yet known if and when an assessment may be levied, but about a 4 percent assessment on property insurance premiums (levied on about a $7.5 billion assessment base) would cover this deficit amount. Citizens, like all other residential insurers, is covered by the Florida Hurricane Catastrophe Fund, but it is not expected to reach its retention for any of the four hurricanes and, therefore, would not be reimbursed any amounts from the FHCF.

III. Effect of Proposed Changes:

The bill requires the Department of Financial Services to reimburse residential property insurance policyholders whose property was damaged by two or more hurricanes and whose insurer applied more than one hurricane deductible to the insurance claims, up to specified limits. (Sections 1, 2, and 4). The bill also requires that hurricane deductibles in residential property insurance policies issued on or after May 1, 2005, be applied on an annual basis to all covered

[10] Florida Hurricane Catastrophe Fund Fiscal Year 2002-2003 Annual Report, State Board of Administration.

hurricane losses that occur during a calendar year. (Section 3.) Details are in the section-by-section analysis, below.

State Reimbursement for Multiple Hurricane Deductibles

Section 1. Legislative Findings and Intent --The bill provides legislative findings and intent supporting state action to reimburse policyholders for financial losses incurred by policyholders who experienced damage from multiple hurricanes and who had multiple deductibles applied by their insurer. The bill makes a legislative finding that at least 30,000 residential property insurance policyholders are in this category, which is based on the OIR survey results summarized in Present Situation, above. The findings recognize that policyholders must be notified by insurers that the hurricane deductible can result in large out-of-pocket expenses, but that policyholders did not anticipate that they would have damage from two or more hurricanes in the same year and be forced to meet two or more deductibles.

The bill makes legislative findings that it is necessary for the public health, safety and welfare and the economic recovery of the state and its citizens that damaged or destroyed residential structures be reconstructed as soon as possible, but that the application of multiple deductibles delays or prevents reconstruction. Therefore, state action to establish a program to reimburse policyholders for the financial loss suffered due to the application of multiple hurricane deductibles constitutes a valid and necessary public and governmental purpose.

Section 2. Reimbursement for Multiple Hurricane Deductibles -- The bill mandates that the Department of Financial Services reimburse policyholders of residential property insurance whose property was damaged by multiple hurricanes and whose insurer applied more than one hurricane deductible to their insurance claims. “Residential property insurance” includes both personal lines residential coverage, which includes homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies, and commercial lines residential coverage, which includes condominium associations, cooperative associations, apartment buildings, and similar policies, including policies covering the common elements of a homeowners' association.

Eligibility Criteria -- In order to be eligible for reimbursement, a policyholder must meet the following criteria:

- Be a policyholder of residential property insurance whose property was damaged in 2004 by two or more hurricanes;
- The policyholder’s insurer applied more than one hurricane deductible to the policyholder’s insurance claims;
- The policyholder must apply to the DFS for reimbursement by March 1, 2005, on a form provided by the department.
- The application to the department must identify the amount of the claims paid by the insurer for each hurricane, the deductible applied to each claim, and any additional information the department may require to verify the claim, including documentation from the insurer.
- The policyholder must have incurred damage in excess of the full amount of a single hurricane deductible. For example, if a policyholder has a $4,000 deductible (2 percent

deductible for a $200,000 home), and has $3,000 in damage from the first hurricane, and $2,000 in damage from the second hurricane, the policyholder has incurred total damage of $5,000, which exceeds the full amount of a single deductible by $1,000.

- The policyholder must meet a $100 deductible for reimbursement for a second and each subsequent hurricane claim.
- The policyholder must provide written authorization for the department to obtain information from the insurer related to the claim for reimbursement.

Reimbursement Limitations -- The amount of reimbursement is limited in various ways. Reimbursement can be paid only for damages that would have been paid under the policy but for application of the deductible. Put another way, if the policy does not cover a particular loss or amount of loss, such as replacement cost coverage, reimbursement may not be paid for that loss.

The reimbursement is limited to the amount of the policyholder's loss in excess of one full deductible. In the same example used above of the policyholder with a $4,000 deductible who had a loss of $3,000 from the first storm, and $2,000 from the second storm, reimbursement would be limited to $1,000.

The maximum reimbursement is also limited to $10,000 per policy for damage caused by two hurricanes and to $20,000 per policy for damage caused by three or more hurricanes. If more than one residential structure is insured under a single policy (for example, two or more houses are covered under the same policy) and a separate hurricane deductible applies to each residential structure, the maximum reimbursement is $10,000 or $20,000 per structure for multiple hurricane claims on that structure.

However, for policies issued to condominium associations, for which the maximum reimbursement is limited to an amount equal to $3,000 multiplied by the number of condominium units. This is intended to address condominiums that have a very large deductible, possibly in the hundreds of thousands of dollars, for which losses may be assessed against the condominium unit owners, for which a $10,000 limit would provide only limited relief. But, the $10,000 or $20,000 limits described above would be paid if it is a greater amount than $3,000 per unit.

Limited Funding; Priority of Payment -- The total amount of funds paid to all policyholders under the reimbursement program is limited to the amount appropriated. Thus, total reimbursements cannot exceed $150 million, minus costs to cover expenses to the department, as appropriated in Section 4, below.

Policyholders seeking reimbursement are prioritized into two groups. Policyholders paid first are those who have received claims payments from their insurer for two or more hurricanes for which each payment was reduced by the full amount of the deductible. One argument for giving these claims first priority is that well-documented evidence exists of two or more deductibles actually being applied by an insurer for two or more claims. Also these policyholders had an out-of pocket expense equaling two full deductibles, and are arguably more deserving of reimbursement than policyholders whose out-of-pocket expense exceeded one deductible, but was less than two full deductibles. Third, since the opportunity for fraud or undocumented damage is less likely for this group, it lessens the need to investigate or adjust the amount of damage and limits the expense for the department to process such claims.

After reimbursing such “full deductible” policyholders, the department must then reimburse all other eligible policyholders. But, if the amount appropriated for reimbursement is not adequate to pay the eligible policyholders in this latter group up to the maximum reimbursement amounts, the department must provide reimbursement on a pro rata basis so that each policyholder receives an equal percentage of the available funds. Though not stated, this implies that the department must wait until the March 1 application deadline, process and investigate such claims as it deems necessary, and then determine the total payments before paying any of these claims.

The bill does not state how the first priority, “full deductible” policyholders are to be paid if the amount appropriated is not sufficient for this group alone.

Investigating Claims; Notice of Reimbursement; Emergency Rules -- The insurer that issued the policy to an applicant for reimbursement must provide the department, upon request, any information in the applicant’s claim file that would assist the department in determining the validity and reasonableness of the claim, subject to the policyholder’s authorization to release such information. (Authorization must be given for the policyholder to be eligible for reimbursement). The department may also conduct a further investigation of the claim or adjust the claim as it determines necessary, and may contract with third parties for this purpose.

Insurers must mail notice of the reimbursement program to residential property insurance policyholders who filed claims with the insurer for two or more hurricanes in 2004, and to whom the insurer applied more than one hurricane deductible, regardless of whether a claims payment was made to the policyholder. The notice must be on a form provided by the department and inform the policyholder of the procedures for seeking reimbursement and include the application form provided by the department. The notice must be mailed in the manner and time specified by the department. For subsequent claims, the insurer must provide notice at the time the insurer notifies the policyholder of the application of the second deductible.

Due to the Legislature’s intent that the department implement the reimbursement program as soon as possible, the department may adopt emergency rules pursuant to s. 120.54(4), F.S., (Administrative Procedures Act or APA). However, there is no exemption from the APA for department actions pursuant to this section, so department denials of reimbursement claims may be considered final agency actions affecting the substantial interest of a party subject to the APA.

A person submitting a reimbursement claim to the department would be subject to criminal penalties for insurance fraud the same as a person filing an insurance claim with an insurer, as provided in s. 817.234, F.S. The Department of Financial Services and its Division of Insurance Fraud would have the same powers of investigation and enforcement relative to insurance fraud as provided in s. 626.989, F.S.

Requiring Annual Hurricane Deductibles

Section 3. The bill amends s. 627.701, F.S., to require that the hurricane deductible of any residential property insurance policy be applied on an annual basis to all covered hurricane losses that occur during the calendar year for losses that are covered under one or more policies issued by the same insurer or an insurer in the same insurer group. This would apply to both personal lines residential policies and commercial residential policies. It would not apply to other policies, such as commercial non-residential policies or auto insurance policies.[11]

By applying on an annual basis, the hurricane deductible would be met once covered hurricane losses reach the amount of the deductible. After that, any hurricane losses that occur for the rest of the calendar year would not be subject to the hurricane deductible. However, the insurer may apply a deductible to a subsequent hurricane that is the greater of: 1) the remaining amount of the hurricane deductible or 2) the amount of the deductible that applies to perils other than a hurricane. For example, assume a policyholder has a 2 percent deductible on a $200,000 home ($4,000) and also has a $500 “other perils” deductible. Example 1 is a $1,000 loss for the first hurricane. For the second hurricane, there is a remaining $3,000 hurricane deductible. Example 2 for the same policyholder is a $3,800 loss for the first hurricane. For the second hurricane there is a $500 deductible, because this “other perils” deductible is greater than the $200 remaining on the hurricane deductible. Example 3 is a $50,000 loss for the first hurricane; for the second and each subsequent hurricane, there is a $500 deductible.

The bill provides that if, under a single policy, a separate hurricane deductible is applicable to each of one or more structures insured under the policy (such as more than one house covered under a single policy), the requirements of this section are applicable to the deductible for each structure.

The bill will effectively require insurers and policyholders to keep track of the amount of hurricane damage that occurs for the first hurricane of a season, even though the damage is under the deductible. The bill allows insurers to require policyholders to report hurricane losses that are below the hurricane deductible or to maintain receipts or other records of such hurricane losses in order to apply such losses to subsequent hurricane claims.

By requiring the deductible to apply to all covered hurricane losses that occur during a calendar year for losses that are covered under one or more policies issued by the same insurer or an insurer in the same insurer group, the bill addresses the situation of a mid-hurricane season renewal within the same insurance company group. For example, if a hurricane loss occurs in August, and the policyholder renews in September, the insurer must apply the August hurricane loss to the deductible under the renewal policy to an October hurricane and all other hurricanes that occur for the rest of the calendar year. But, this assumes that the deductible has not been reduced for the renewal policy. The bill provides that if a hurricane loss occurs and different deductible amounts apply under more than one policy issued by the same insurer group, the highest deductible applies. This prevents a policyholder from lowering his deductible after a hurricane loss (e.g., from a 5 percent, $10,000 deductible to a 2 percent $4,000 deductible after a $5,000 hurricane loss has occurred) in order to effectively eliminate the hurricane deductible and to apply the “other perils deductible.” However, if a policyholder who had a hurricane loss is

[11] As other references to “residential property insurance” in s. 627.701, F.S., this term is understood to mean “residential coverage” as described in s. 627.4025, F.S., which includes both personal lines residential coverage (homeowners, mobile home owners dwelling, tenants, condominium unit owners, cooperative unit owners and similar policies) and commercial lines residential coverage (condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners’ association.)

provided or offered a lower hurricane deductible under a new or renewal policy by the same insurer group, the insurer must notify the policyholder in writing at the time the lower deductible is offered or provided that the lower hurricane deductible will not apply until January 1 of the following calendar year.

The bill does not require an insurer to apply hurricane losses to the hurricane deductible that occurred under a different insurance company's policy. So, if a policyholder changes insurance companies, a new hurricane deductible begins to apply. This is of no concern if a hurricane loss has not occurred. But if a hurricane loss has occurred, there remains a possibility of two hurricane deductibles being applied. But, as a practical matter, if the bill's requirements were to apply in this situation, insurers are likely to refuse to issue coverage to homeowners who had a prior hurricane loss during that year. Also, past and current history indicate that insurers may be prohibited by regulators or the Legislature from canceling or non-renewing residential policies after a hurricane occurs.

These provisions apply to policies issued or renewed on or after May 1, 2005. This appears to provide sufficient time for insurers to file new policy forms and rates, have them approved by OIR, and give policyholders 45 days notice of the renewal premium, as required by s. 627.4133, F.S. However, this is a relatively short time period, intended to maximize the number of policies that would have this added coverage for the 2005 hurricane season.

Funding the Reimbursement of Multiple Deductibles

Section 4. The bill transfers up to $150 million from the Florida Hurricane Catastrophe Fund (FHCF) to the Insurance Regulatory Trust Fund and appropriates these funds for the reimbursement to residential property insurance policyholders for the expense of multiple deductibles, as provided in this act. This appropriation is made, notwithstanding the current requirements of s. 215.55, F.S., that limit the use and amount of FHCF funds (as described in Present Situation).

Specifically, the bill directs the State Board of Administration (SBA) to transfer, no later than January 15, 2005, $20 million from the FHCF to the Insurance Regulatory Trust Fund within the Department of Financial Services to fund the reimbursement program. The SBA is further authorized to transfer up to $130 million from the FHCF to the Insurance Regulatory Trust Fund only after the Chief Financial Officer documents expenditure needs to the SBA and certifies that the amount to be transferred does not exceed the documented need. Copies of the CFO's certification must be provided to the Executive Office of the Governor and the Chair and Vice Chair of the Legislative Budget Commission. Additionally, the SBA must provide 3 working days notice prior to each transfer to such officials.

The legislation appropriates $150 million from the Insurance Regulatory Trust Fund to fund the reimbursement program from the effective date of this act through September 30, 2005. Up to 1 percent ($1.5 million) of the appropriation may be used by the department for administration of the reimbursement program. All FHCF monies transferred to the Trust Fund that are unexpended on September 30, 2005, shall revert to the FHCF.

Beginning January 15, 2005, and on a monthly basis thereafter, the CFO must provide a report containing information regarding the reimbursement for multiple hurricane deductibles to the Executive Office of the Governor and the Chair and Vice Chair of the Legislative Budget Commission. The report must include cumulative and monthly information on the number of reimbursement claims submitted, the total amount requested for reimbursement, the number of claims paid, and the amount paid for reimbursement.

In order to maintain the actuarially indicated premiums required for the FCHF in s. 215.555, F.S., the State Board of Administration must increase future FHCF premiums by the amount appropriated and transferred from the FHCF pursuant to this section, plus any additional amount necessary to recover lost investment income, minus any refunds of unused cash to the FHCF. The increase in future premiums shall be divided in equal or approximately equal amounts over a 5-year period beginning with the June 1, 2005 contract year.

Section 5. The act takes effect 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

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Reimbursement of Multiple Hurricane Deductibles

Policyholders whose insurer applied more than one hurricane deductible would be eligible to receive reimbursement of the amount of loss in excess of one full deductible, up to $10,000 per policy for damage caused by two hurricanes or $20,000 per policy for damage caused by three or more hurricanes, minus a $100 deductible. Condominium associations may be eligible to receive an amount up to $3,000 per unit. A total of $150 million would be appropriated for this purpose, but the total number of policyholders and the amount of multiple deductibles actually paid is unknown. As described in Present Situation, using the OIR survey results and attempting to account for missing information, committee staff estimates that approximately 36,000 policies may have had multiple deductibles applied to claims above the deductible, imposing about $70 million in expense to policyholders for the second and subsequent deductible, but this does not account for policyholders who had claims below the deductible and claims not yet reported to the insurer.

Insurers are likely to be subject to increased claims activity from policyholders who had damage from two or more hurricanes and who have not yet filed all claims for amounts that are under the deductible, in order to be eligible for state reimbursement. It is assumed that claim amounts over the deductible have already been filed, or will be regardless of this act. Insurers may also be requested to provide documentation to policyholders or the department for previously filed claims that were not paid due to being under the deductible.

Insurers will be required to pay an increase in premiums to the State Board of Administration for coverage by the FHCF by the amount appropriated and transferred from the FHCF for the reimbursement program, plus loss of investment income, divided over a 5-year period. Insurers are permitted to recoup FHCF premiums in the premiums they charge to residential policyholders, subject to approval by OIR. If the entire $150 million is transferred and appropriated, it is estimated that this would result in an average premium increase to residential policyholders of about 0.5 to 0.6 percent annually for 5 years, but could vary depending on each insurer’s method for recouping this expense. This estimate is based on total residential premiums being approximately $5.5 billion as reported to OIR on June 30, 2004, and $150 million being 2.7 percent of this amount. Divided over 5 years, this 2.7 percent increase would be 0.52 percent per year, without accounting for lost investment income.

Future Annual Hurricane Deductibles

Residential policyholders issued new or renewal policies after May 1, 2005, would only have to meet the out-of-pocket expense of one hurricane deductible (typically, 2% of policy limits, but generally not greater than 5%), if they have damage from two or more hurricanes during a calendar year. The “other perils” deductible, typically $500, would apply to subsequent hurricanes after the hurricane deductible is met.

The premium increase for this additional coverage is estimated to be between 1 and 4 percent, based on model hurricane losses projected by the FHCF and information obtained from insurance company representatives. The model loss examples from the FHCF are believed to represent the range of likely outcomes for the expected increase in average annual hurricane losses for residential policies, which range from 1.81 to 3.33 percent. Policies also cover non-hurricane risks, which indicates the actual premium impact may be less. But, insurers are also likely to have greater expense in adjusting or investigating hurricane losses below the deductible for the first hurricane of each year, in order to apply this amount to future hurricane losses under the policy.

C. Government Sector Impact:

The bill transfers up to $150 million from the Florida Hurricane Catastrophe Fund (FHCF) to the Insurance Regulatory Trust Fund and appropriates these funds for reimbursing policyholders for the expense of multiple deductibles. (See Effect of Proposed Change, Section 4 for more detail.) It is unknown whether $150 million is adequate to reimburse all eligible policyholders in full. Using the OIR survey results and attempting to account for missing information, committee staff estimates that approximately $70 million is needed to reimburse about 36,000 policyholders who had multiple deductibles applied to claims above the deductible, but this does not account for policyholders who had claims below the deductible and claims not yet reported to the insurer. But, the $70 million also does not account for reducing this figure due to the maximum reimbursement limitations.

The bill provides that the Department of Financial Services (DFS) may use up to one percent of the amount appropriated, i.e., $1.5 million, for administering reimbursement to policyholders, which would include receiving, processing, investigating, and paying reimbursement claims, as well as developing the reimbursement form and adopting rules necessary for this program. The DFS is permitted to contract with third parties for any of these functions. The DFS states that its Consumer Services Office will oversee this program.

The Department has provided only initial, rough estimates of the amount that may be needed to implement this program. The Department estimates that the so-called "full deductible" claims that are entitled to first priority of payment under this bill will take approximately one hour to process at $15 an hour. since both insurance claims have already been adjusted and paid by the insurer, minus the deductible. Using the staff estimate of 36,000 such claims, this would total $540,000. It is even less clear what expense the Department would have for the remaining "partial deductible" claims and how many of such claims will be filed. If the insurer has already adjusted the claim, the Department expense may be comparable to the full deductible claims. Even though the bill requires that the insurer have denied or reduced the claim due to the deductible, the insurer may not have actually adjusted or investigated the claim, particularly if a small damage claim was clearly below the deductible. Assuming there are 50,000 additional partial deductible claims, of which 25,000 had sufficient documentation from the insurer for the department to verify the amount of damage, the cost for the first 25,000 would be $375,000 at the same estimate of $15 per hour for one hour. But, the additional cost for the second 25,000 claims may range from $1.5 million to $7.5 million using a range of $60 per claim (two hours at $15 per hour) to $300 per claim (a cost comparable to an insurer's cost of adjusting a claim). Based on these assumptions, total expenses may range from about $2.4 million to $8.4 million, well in excess of the bill's $1.5 million appropriation for administrative costs. Also, these estimates do not include the department's costs of administrative hearings that may be required for reimbursement claims that are denied.

If the appropriation for administrative expenses is insufficient to allow for investigation or adjustment, it is more likely that fraudulent or excessive reimbursement claims will be paid. But, the number of claims that may be filed remains very speculative, particularly partial deductible claims, so these estimates may be high.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 605174 by Committee on Banking and Insurance: The amendment requires the applicant for reimbursement to submit documentation from the insurer to the department that the insurance claim was not paid in full or in part due to application of a second deductible. This clarifies the bill's requirement that the insurance company must first deny or reduce two or more claims due to the application of the deductible in order for a policyholder to be eligible for reimbursement.

Barcode 202050 by Committee on Banking and Insurance: The amendment states that a condominium association is not eligible to be reimbursed for loss amounts for which the condominium association has assessed unit owners and for which the unit owners have insurance coverage for the assessment.

Barcode 571144 by Committee on Banking and Insurance: The bill already provides that the state will not pay for loss amount for which the policyholder has received a grant from FEMA. The amendment states that reimbursement may not be paid for amounts for which the policyholder has received a grant from any federal, state, county, or municipal agency or program.

Barcode 173302 by Committee on Banking and Insurance: The amendment clarifies that after "full deductible" claimants are paid in full, the pro-rata share of reimbursement funds available to other qualified applicants in the event that the appropriation is not sufficient to pay all claims in full is an equal percentage of the amount of the reimbursement claim that is approved. The current language could have been interpreted to give each applicant the same dollar amount, regardless of the severity of their loss.

Barcode 685798 by Committee on Banking and Insurance: Some insurers have waived deductibles, usually in those cases where the insurer is not able to distinguish the amount of the damage caused by multiple storms. The amendment provides that it is a violation of the Insurance Code for insurers to change their method of determining whether to waive or apply multiple hurricane deductibles to multiple claims due to the reimbursement provisions under the bill. It also provides the Office of Insurance Regulation [shall collect data] from residential property insurers regarding the number of claims filed by policyholders for two or more claims for the 2004 hurricane season, the number and dollar amount of those claims for which the insurer applied two or more deductibles, and any other information the Department may require. The amendment contains an error in that the bracketed term above is not included in the language of the amendment. (WITH TITLE AMENDMENT)

Barcode 411584 by Committee on Banking and Insurance: The amendment changes the date to December 31, 2005 (from September 30, 2005) for unexpended funds to revert to the Florida Hurricane Catastrophe Fund. This provides additional time for the department to reimburse applicants before funds revert to the FHCF.

Barcode 255364 by Committee on Banking and Insurance: The bill requires the SBA to increase future premiums to insurers for coverage from the Florida Hurricane Catastrophe Fund over a 5-year period in order to maintain actuarially sound premiums. The amendment changes the date when the 5-year increase in premiums for the FHCF begins from June 1, 2005 to June 1, 2006. Representatives from the FHCF informed the state that the premiums for the Fund are developed in March and that the 2005 date would be too early to determine how much of the appropriation would be used.