

By Senator Garcia

41-516-05

1                                   A bill to be entitled  
2           An act relating to hurricane deductibles;  
3           providing for the Department of Financial  
4           Services to reimburse policyholders of  
5           residential property insurance for multiple  
6           deductibles applied by insurers for two or more  
7           hurricanes; providing legislative findings and  
8           intent; establishing criteria for eligibility  
9           for reimbursement; requiring applications to be  
10          submitted to the department and to include  
11          certain information; limiting the maximum  
12          amount of reimbursement; limiting total  
13          reimbursement to the amount appropriated for  
14          this purpose; requiring payment to be made in a  
15          specified order of priority and providing for  
16          pro rata reimbursement; requiring insurers to  
17          provide the department with certain information  
18          related to the claim for reimbursement, subject  
19          to the policyholder's authorization;  
20          authorizing the department to contract with a  
21          third party for investigation or adjustment of  
22          a claim for reimbursement; requiring insurers  
23          to mail notice to certain policyholders of the  
24          reimbursement procedures; providing for  
25          emergency rules; providing that an application  
26          for reimbursement constitutes an insurance  
27          claim for purposes of determining insurance  
28          fraud; amending s. 627.701, F.S.; requiring  
29          that hurricane deductibles of residential  
30          property insurance policies be applied on an  
31          annual basis to all hurricane losses that occur

1 during a calendar year; allowing insurers to  
2 apply an alternative deductible to subsequent  
3 hurricane losses after the annual deductible is  
4 met; providing the method by which the  
5 hurricane deductible is to be calculated if a  
6 hurricane deductible is changed for a new or  
7 renewal policy; allowing insurers to require  
8 policyholders to report hurricane losses or to  
9 maintain receipts or records in order to apply  
10 hurricane losses to a subsequent hurricane  
11 claim; providing appropriations; requiring the  
12 State Board of Administration to increase  
13 future premiums to the Florida Hurricane  
14 Catastrophe Fund; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Legislative findings and intent.--The  
19 Legislature finds that the four hurricanes striking Florida in  
20 2004 resulted in at least 30,000 residential property  
21 insurance policyholders experiencing damage from two or more  
22 hurricanes for which insurers have applied the hurricane  
23 deductible to each hurricane claim. The fact that  
24 policyholders have separate hurricane deductibles can result  
25 in significant out-of-pocket expense and financial hardship to  
26 policyholders. Although insurers are required by law to notify  
27 policyholders that the hurricane deductible can result in a  
28 large out-of-pocket expense, it was not anticipated that a  
29 policyholder would have damage from two or more hurricanes in  
30 the same year and be forced to meet two or more deductibles in  
31 this circumstance. The Legislature further finds that the

1 public health, safety, and welfare demand that residential  
2 structures damaged or destroyed in a catastrophe be repaired  
3 or reconstructed as soon as possible and that application of  
4 multiple deductibles delays or prevents such reconstruction,  
5 hinders the economic recovery of the state and its residents,  
6 and endangers the public health, safety, and welfare.  
7 Therefore, state action to establish a program to reimburse  
8 policyholders for the financial loss suffered due to the  
9 application of multiple hurricane deductibles constitutes a  
10 valid and necessary public and governmental purpose. The  
11 Legislature intends to establish a program to reimburse  
12 policyholders for such losses, up to specified limits.

13       Section 2. Reimbursement for multiple hurricane  
14 deductibles.--

15       (1) As used in this section, the term "residential  
16 property insurance" means residential coverage as described in  
17 section 627.4025(1), Florida Statutes.

18       (2) The Department of Financial Services shall  
19 reimburse policyholders of residential property insurance  
20 whose property was damaged by two or more hurricanes in 2004  
21 and whose insurer applied more than one hurricane deductible  
22 to the insurance claims. The reimbursement shall be the amount  
23 of the claim that was not paid due to application of the  
24 second or subsequent deductible, as further limited by this  
25 section.

26       (3) To be eligible for reimbursement, a policyholder  
27 must meet the criteria of subsection (2) and must:

28       (a) Apply to the department by March 1, 2005, on a  
29 form provided by the department. The form must identify the  
30 amount of the claims paid by the insurer, per hurricane, the  
31 amount of the deductible which was applied to each claim; and

1 such additional information as the department requires to  
2 verify the claim for reimbursement, including documentation  
3 from the insurer.

4 (b) Have incurred damage in excess of the full amount  
5 of a single hurricane deductible.

6 (c) Meet a \$100 deductible for a second and each  
7 subsequent hurricane claim in addition to the amount of the  
8 deductible which must be met under paragraph (b).

9 (d) Provide written authorization for the department  
10 to obtain from the policyholder's insurer information related  
11 to the claim for reimbursement.

12 (4)(a) Reimbursement may be provided only for damages  
13 that would have been paid under the policy but for application  
14 of the deductible. The maximum reimbursement shall be limited  
15 to the amount of the policyholder's loss in excess of one full  
16 deductible, but not more than \$10,000 per policy for damage  
17 caused by two hurricanes and not more than \$20,000 per policy  
18 for damage caused by three or more hurricanes, except as  
19 otherwise provided in this subsection.

20 (b) For a policy issued to a condominium association,  
21 the maximum reimbursement shall be limited to an amount equal  
22 to \$3,000 multiplied by the number of condominium units or the  
23 maximum amount specified in paragraph (a) or paragraph (c),  
24 whichever is greater.

25 (c) If more than one residential structure is insured  
26 under the policy and a separate hurricane deductible applies  
27 to each, the maximum reimbursement shall be limited to \$10,000  
28 per structure for multiple hurricane claims for that  
29 structure.

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1       (d) Reimbursement may not be paid for loss amounts for  
2 which the policyholder has received a grant from the Federal  
3 Emergency Management Agency.

4       (5) The total amount of funds paid to policyholders  
5 pursuant to this section is limited to the amount appropriated  
6 for this purpose. Payments shall be made to eligible  
7 applicants in the following order of priority:

8           (a) The department shall first reimburse policyholders  
9 who received claims payments from their insurer for two or  
10 more hurricanes for which each payment was reduced by the full  
11 amount of the deductible.

12           (b) After reimbursing all policyholders who meet the  
13 criterion of paragraph (a), the department shall reimburse all  
14 other eligible policyholders. If the amount appropriated for  
15 this purpose is not adequate to pay all other eligible  
16 policyholders up to the maximum reimbursement amounts, the  
17 department shall provide reimbursement pro rata so that each  
18 policyholder receives an equal percentage of the funds  
19 available.

20       (6) The insurer issuing the policy to the applicant  
21 for reimbursement shall provide to the department, upon  
22 request, such information in the applicant's claim file as  
23 will assist the department in determining the validity and  
24 reasonableness of the claim, subject to the policyholder's  
25 authorization to release such information. The department may  
26 further investigate or adjust the claim as it determines is  
27 necessary and may contract with third parties for this  
28 purpose.

29       (7) Insurers shall mail notice to those residential  
30 property insurance policyholders who filed claims with the  
31 insurer for two or more hurricanes in 2004 and to whom the

1 insurer applied more than one hurricane deductible, whether  
2 there was a claims payment or not. The notice shall be on a  
3 form provided by the department which informs the policyholder  
4 of the reimbursement program established by this section and  
5 the procedures for seeking reimbursement, including the  
6 application form provided by the department. The notice shall  
7 be mailed in such manner and within such time as specified by  
8 the department. For subsequent claims, the insurer shall  
9 provide the notice at the time that the insurer notifies the  
10 policyholder of the application of the second deductible.

11 (8) The department may adopt rules to implement this  
12 section. It is the Legislature's intent that the department  
13 implement this section as soon as possible in order to provide  
14 immediate relief to affected policyholders. Therefore, the  
15 department may adopt such rules pursuant to the emergency rule  
16 procedures of section 120.54(4), Florida Statutes.

17 (9) An application for reimbursement shall be  
18 considered an insurance claim for purposes of determining  
19 whether a person has committed insurance fraud pursuant to  
20 section 817.234, Florida Statutes. The Department of Financial  
21 Services and the department's Division of Insurance Fraud  
22 shall have the powers to investigate and enforce such actions  
23 provided in section 626.989, Florida Statutes.

24 Section 3. Present subsections (5) through (8) of  
25 section 627.701, Florida Statutes, are renumbered subsections  
26 (6) through (9), respectively, and a new subsection (5) is  
27 added to that section to read:

28 627.701 Liability of insureds; coinsurance;  
29 deductibles.--

30 (5) The hurricane deductible of any residential  
31 property insurance policy shall be applied as follows:

1           (a) The hurricane deductible shall apply on an annual  
2 basis to all covered hurricane losses that occur during a  
3 calendar year for losses that are covered under one or more  
4 policies issued by the same insurer or an insurer in the same  
5 insurer group.

6           (b) If a hurricane deductible applies separately to  
7 any structure insured under a single policy, the requirements  
8 of this subsection apply with respect to the deductible for  
9 such structure.

10           (c) If there was a hurricane loss for a prior  
11 hurricane or hurricanes during the calendar year, the insurer  
12 may apply a deductible to a subsequent hurricane which is the  
13 greater of the remaining amount of the hurricane deductible or  
14 the amount of the deductible which applies to perils other  
15 than a hurricane. Insurers may require policyholders to report  
16 hurricane losses that are below the hurricane deductible or to  
17 maintain receipts or other records of such hurricane losses in  
18 order to apply such losses to subsequent hurricane claims.

19           (d) If there are hurricane losses in a calendar year  
20 on more than one policy issued by the same insurer or an  
21 insurer in the same insurer group, the hurricane deductible  
22 shall be the highest amount stated in any one of the policies.  
23 If a policyholder who had a hurricane loss under a prior  
24 policy is provided or offered a lower hurricane deductible  
25 under a new or renewal policy, the insurer must notify the  
26 policyholder, in writing, at the time the lower hurricane  
27 deductible is provided or offered that the lower hurricane  
28 deductible will not apply until January 1 of the following  
29 calendar year.

1 This subsection applies to policies issued or renewed on or  
2 after May 1, 2005.

3       Section 4. (1) Notwithstanding section 215.555,  
4 Florida Statutes, the State Board of Administration is  
5 directed to transfer, no later than January 15, 2005, \$20  
6 million from the Florida Hurricane Catastrophe Fund cash  
7 balance to the Insurance Regulatory Trust Fund within the  
8 Department of Financial Services to provide funding for the  
9 reimbursements authorized in subsection (3).

10       (2) Notwithstanding section 215.555, Florida Statutes,  
11 the State Board of Administration is directed to transfer up  
12 to \$130 million from the Florida Hurricane Catastrophe Fund  
13 cash balance to the Insurance Regulatory Trust Fund in the  
14 Department of Financial Services to provide funding for the  
15 reimbursements authorized in subsection (3). The Chief  
16 Financial Officer shall periodically certify to the State  
17 Board of Administration an amount to be transferred from the  
18 funds appropriated in this subsection based on the documented  
19 expenditure need for reimbursement payments submitted to the  
20 Department of Financial Services. The amount of each transfer  
21 may not exceed the documented need. The Chief Financial  
22 Officer shall provide a copy of each certification to the  
23 Executive Office of the Governor and the chair and vice chair  
24 of the Legislative Budget Commission. The State Board of  
25 Administration shall provide notice of each transfer to the  
26 Executive Office of the Governor and the chair and vice chair  
27 of the Legislative Budget Commission at least 3 working days  
28 before such transfer.

29       (3) The sum of \$150 million is appropriated for the  
30 period from the effective date of this act through September  
31 30, 2005, from the Insurance Regulatory Trust Fund in the



1 Department of Financial Services in a special appropriation  
2 category "Hurricane Multiple Deductible Reimbursements" for  
3 reimbursement to residential property insurance policyholders  
4 for the expense of multiple hurricane deductibles, as provided  
5 in sections 1 and 2. Up to 1 percent of this appropriation may  
6 be used by the department for the administration of payments  
7 to such policyholders.

8 (4) All Florida Hurricane Catastrophe Fund moneys  
9 transferred to the Insurance Regulatory Trust Fund under this  
10 act which remain unexpended on September 30, 2005, shall  
11 revert to the Florida Hurricane Catastrophe Fund.

12 (5) Beginning January 15, 2005, and monthly  
13 thereafter, the Chief Financial Officer shall provide a report  
14 to the Executive Office of the Governor and the chair and vice  
15 chair of the Legislative Budget Commission containing  
16 information regarding the reimbursement for multiple hurricane  
17 deductibles. The report shall include, but is not limited to,  
18 cumulative and monthly information on the number of  
19 reimbursement claims submitted, the total amount requested for  
20 reimbursement, the number of claims paid, and the amount paid  
21 for reimbursement.

22 (6) In order to maintain actuarially indicated  
23 premiums as required by section 215.555, Florida Statutes, the  
24 State Board of Administration shall increase future premiums  
25 by the amount appropriated and transferred from the Florida  
26 Hurricane Catastrophe Fund under this section, plus additional  
27 amounts necessary to recover lost investment income, less any  
28 refunds of unused cash to the Florida Hurricane Catastrophe  
29 Fund. The increase in future premiums shall be divided over 5  
30 years, in equal or approximately equal amounts, beginning with  
31 the June 1, 2005, contract year.

1           (7) All appropriations authorized by this act are  
2 nonrecurring and are intended to address needs caused by  
3 Hurricanes Charley, Frances, Ivan, and Jeanne.

4           Section 5. This act shall take effect upon becoming a  
5 law.

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8                               SENATE SUMMARY

9           Creates a program to reimburse residential property  
10 insurance policyholders for expenses incurred in 2004  
11 when the insured properties were damaged by two or more  
12 hurricanes and the respective insurers imposed more than  
13 one hurricane deductible. The program will be funded by  
14 appropriations from the cash balance of the Florida  
Hurricane Catastrophe Fund, to be repaid in 5 years  
through increased premiums. Requires insurers to apply  
hurricane deductibles on an annual basis for residential  
property insurance policies issued or renewed on or after  
a specified date.