HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 9A W/CS Hurricane Deductibles
SPONSOR(S): Ross
TIED BILLS: **IDEN./SIM. BILLS:** SB 10A

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	16 Y, 1 N, w/CS	Callaway	Cooper
2) Fiscal Council	20 Y, 1 N	Belcher	Kelly
3) Commerce Council	10 Y, 0 N, w/CS	Callaway	Bohannon
4)			
5)			

SUMMARY ANALYSIS

Multiple Hurricane Deductibles: The bill establishes a reimbursement program implemented by the Department of Financial Services (DFS) to aid many homeowners/policyholders who had losses amounting to more than one hurricane deductible due to the four hurricanes hitting Florida in 2004. 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 DFS for reimbursement by March 1, 2005, on a form provided by DFS.
- The policyholder must have incurred damage in excess of the full amount of a single hurricane deductible.
- The policyholder must meet a $100 deductible for reimbursement for a second and each subsequent hurricane claim.
- The policyholder must provide written authorization for DFS to obtain information from the insurer related to the claim for reimbursement.
- The policyholder must submit documentation from the insurer to DFS that the insurance claim was not paid in full or in part due to application of a second deductible.

Reimbursement is limited to the amount of hurricane deductible the homeowner/policyholder paid for the second, third, and/or fourth hurricane deductible **or** the amount of loss the homeowner has after incurring one full hurricane deductible, up to a maximum of $10,000 for each hurricane after the first one. 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. After reimbursing these policyholders, DFS must then reimburse all other eligible policyholders. But, if the amount appropriated for reimbursement is not adequate to pay the other eligible policyholders, reimbursement is on a pro rata basis.

Annual Hurricane Deductibles: The bill amends current law by mandating application of a hurricane deductible for residential property insurance per calendar year as long as the property is insured by the same insurer or an insurer in the same insurer group. In a calendar year, if there is a loss from a storm, the insurer may apply a deductible to the subsequent storm that is the greater of the remaining amount of the hurricane deductible from the first storm or the amount of the non-hurricane deductible. In a calendar year, if a homeowner has more than one residential insurance policy and experiences a loss due to a hurricane, then the subsequent deductible must be the highest amount stated in any one of the policies as long as the policies are from the same insurer or insurers in the same insurer group.

Fiscal Impact: The bill transfers $150 million from the Florida Hurricane Catastrophe Fund to DFS and appropriates it as nonrecurring moneys to the Insurance Regulatory Trust Fund in DFS for use by DFS to provide reimbursements to homeowners for multiple deductibles. Up to 1% of the appropriation may be expended by DFS for administrative costs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

NOTE: The Speaker of the House has adopted new House Principles to guide members in evaluating legislation during the 2004-2006 Legislature. These principles are:

Provide limited government,

Ensure lower taxes,

Safeguard individual liberty,

Promote personal responsibility,

Empower families, and

Maintain public security.

The following factors about the bill are relevant to analyzing its compatibility with such principles:

Provide limited government: The bill creates a program within the Department of Financial Services (DFS) to reimburse eligible homeowners for all or part of the monies paid for multiple hurricane deductibles due to the 2004 hurricanes. However, the program is non-recurring and will terminate once all applications for reimbursement are processed and paid or the funds appropriated are exhausted.

Promote personal responsibility, empower families, and maintain public security: The bill provides a mechanism for homeowners to get repayment from the State for all or part of the second, third, and/or fourth hurricane deductible charged to the homeowner due to the 2004 hurricanes. The homeowner may use the reimbursement provided in the bill to help repair or rebuild their residence.

B. EFFECT OF PROPOSED CHANGES:

The 2004 Hurricane Season

The 2004 hurricane season was very active with four hurricanes causing damage to Florida within 45 days of each other.[1] Hurricane Frances and Hurricane Jeanne followed very similar tracks with virtually identical landfall points and both crossed the original path of Hurricane Charley.

The hurricanes affected each county in Florida in one way or another. For example, every school district and court was forced to close for at least one day during the 2004 hurricane season as a result of or in anticipation of one or more of the hurricanes.

[1] Hurricane Charley made landfall in Florida on August 13, 2004 as a category 4 hurricane with 145 mph winds. Hurricane Frances made landfall in Florida on September 5, 2004 as a category 2 hurricane with 105 mph winds. Hurricane Ivan made landfall in Florida on September 16, 2004 as a category 3 hurricane with 130 mph winds. Hurricane Jeanne made landfall in Florida on September 26, 2004 as a category 3 hurricane with 120 mph winds. (Information from National Weather Service Tropical Prediction Center National Hurricane Center -http://www.nhc.noaa.gov/archive/2004/tws/MIATWSAT_nov.shtml?)

As of November 29, 2004, insurers have paid almost $10 billion for claims arising from the four hurricanes occurring in 2004, the total number of claims reported from all hurricanes is over 1.5 million, and gross property losses are estimated at $20.6 billion.[2] Residential property losses are estimated at $14.5 billion.[3]

Florida Hurricane Catastrophe Fund (CAT Fund)

The Florida Hurricane Catastrophe Fund (CAT 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 CAT Fund 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 CAT Fund 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 CAT Fund 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 CAT Fund coverage limit is its pro rata share of the $15 billion limit, based on the insurer's pro rata share of total CAT Fund premiums. Each insurer's retention is its same pro rata share of the $4.5 billion industry-wide retention. 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.

The CAT Fund 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 1 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 2004-05 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 CAT Fund for the 2004 hurricane season, the fund will pay approximately $2.1 billion, well below its $6.12 million cash balance, making bonding unnecessary. However, the loss estimates for the CAT Fund are still preliminary and as losses develop, the actual payments may exceed the current estimates.

[2] Hurricane Reporting Summary from Office of Insurance Regulation dated November 29, 2004. The figure includes claims from all property lines, including homeowners, mobile home, farm owners, fire and allied lines, commercial multi-peril, private passenger and commercial automobile physical damage and other.
[3] This figure is based on estimates from hurricane models.

Hurricane Deductibles

Hurricane deductibles on residential property insurance are typically percentage deductibles (usually 2 percent or 5 percent of the policy dwelling limits) and apply only for losses from a formally designated hurricane system.[4] For example, a homeowner with a 2 percent deductible on a $200,000 home would have to absorb a $4,000 deductible and would receive $196,000 from their insurer if their home was destroyed by a hurricane. A homeowner with a 2 percent deductible on a $200,000 home would have to absorb a $4,000 deductible and would receive $1,000 from their insurer if a hurricane caused $5,000 in damage to their home. Hurricane deductibles are separate from the traditional $500 deductible for losses from fire and other perils. Current law also provides hurricane deductibles of $250 and $500 for certain homeowner's policies.[5]

Hurricane deductibles apply *per peril*. In other words, each time a homeowner has damage to its property resulting from a hurricane, the homeowner must "meet" or "absorb" the hurricane deductible before the insurer will pay the claim.

Per peril hurricane deductibles:

- lower customer premiums, making insurance policies more affordable, and
- enable insurers to offer policies to larger numbers of customers than would be possible if there were no deductibles.

Current law (s. 627.701(4), F.S.) requires each residential property insurance policy to include language on the declaration page(s) in at least 18 point boldface type notifying the policyholder the policy contains a separate deductible for hurricane losses (i.e. a per peril hurricane deductible).

Ninety-two percent of the homes in Florida are covered by a $500 deductible or a 2 percent deductible. The remaining 8 percent have a deductible of 5 percent or more.[6] According to numbers released by the CAT Fund in 2002, out of 3,777,269 single family homes throughout the state, 2,490,956 are subject to a 2 percent deductible (66 percent). Almost 1 million units had deductibles of $500 (26 percent). Therefore, about 300,000 homes statewide have deductibles of 5 percent or higher.[7]

The common deductible on homes valued up to $50,000 is $250, is $500 on homes over $50,000 and up to $100,000, and is 2 percent of policy limits on homes over $100,000 and up to $250,000. The homeowner and insurer negotiate and agree on the deductible amount on homes valued over $500,000.[8]

The bill amends current law by mandating application of a hurricane deductible for residential property insurance per calendar year as long as the property is insured by the same insurer or an insurer in the same insurer group.

In a calendar year, if there is a loss from a storm, the insurer may apply a deductible to the subsequent storm that is the greater of the remaining amount of the hurricane deductible from the first storm or the amount of the non-hurricane deductible.

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 would apply. This is of no concern if a hurricane loss has not occurred; however, if a hurricane loss has occurred, there remains a possibility of two hurricane deductibles

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[4] Hurricane deductibles do not apply for losses from tropical storms or tornadoes; the policy's non-peril deductible will apply. (see s. 627.4025, F.S. (2004)). Hurricane deductibles were enacted after Hurricane Andrew hit Florida in 1992.
[5] s. 627.701(3), F.S. (2004).
[6] Hurricane Insurance Information Center at http://www.disasterinformation.org/deductibles.htm.
[7] Hurricane Insurance Information Center at http://www.disasterinformation.org/deductibles.htm; Insurance Information Institute at http://www.iii.org/media/hottopics/insurance/hurricanwindstorm/.
[8] Hurricane Insurance Information Center at http://www.disasterinformation.org/deductibles.htm.

being applied. As a practical matter, if the requirements of the bill were to apply in this situation, insurers would likely 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.

In a calendar year, if a homeowner has more than one residential insurance policy and experiences a loss due to a hurricane, then the subsequent deductible must be the highest amount stated in any one of the policies as long as the policies are from the same insurer or insurers in the same insurer group. A policyholder who changes residential property insurance policies during a calendar year and obtains a lower hurricane deductible in the subsequent policy will not reap the benefit of the lower hurricane deductible until January 1st of the next calendar year. The bill requires the insurer writing the policy with the lower hurricane deductible to notify the policyholder (in writing) that the lower hurricane deductible will not apply until January 1st of the next calendar year.

The bill also allows insurers to require policyholders to report hurricane losses or maintain receipts or records of hurricane losses below the hurricane deductible. This provision will hopefully eliminate insurers from having to investigate small hurricane losses in order to calculate and apply the annual hurricane deductible to other hurricane losses.

The changes to the hurricane deductible statute 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 current law in 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.

Changing the residential property insurance hurricane deductible to an annual one may increase homeowner's residential property insurance premiums by 1-3 percent.[9] As with any premium increase; however, the Office of Insurance Regulation (OIR) will review the insurer's rate filing requesting a rate increase and approve or disapprove the rate filing.[10]

Multiple Hurricane Deductibles

During the 2004 hurricane season, many homeowners in Florida sustained damage to their homes from more than one hurricane.[11] Homeowners sustaining damage from more than one hurricane were sometimes required to pay more than one hurricane deductible. Sometimes an insurer did not charge (or waived) application of the second, third, and/or fourth hurricane deductible. At this time there are not adequate or accurate records to evaluate the exact cost of all hurricane deductibles that insurers waived during the 2004 hurricane season. Similarly, it is difficult to evaluate the exact cost of multiple deductibles to homeowners/policyholders.

Although OIR surveyed insurers in an attempt to obtain information on the dollar amount of hurricane deductibles waived and charged, it is impossible for the survey to exactly calculate these amounts for a variety of reasons. For example, some insurers may adjust claims after the survey was completed and may charge or waive a second or subsequent hurricane deductible at the time the claim is adjusted. Some insurers were unable to calculate the number or amount of multiple deductibles paid by policyholders/homeowners at the time of the survey. Some insurers could not calculate deductible information on claims where the policyholder reported the claim but no payment was made by the insurer because the loss was less than the deductible or the insurer did not have coverage of the claim.

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[9] Testimony received at the House of Representatives Insurance Committee meeting December 2, 2004 from a representative of State Farm Insurance Company.
[10] In general, the standard for approving insurance rates in Florida is that the rate may not be excessive, inadequate, or unfairly discriminatory. (ss. 627.062(1), F.S. (2004); 626.0629, F.S. (2004))
[11] Damage from multiple hurricanes was caused, in part, because Hurricane Frances and Hurricane Jeanne followed a similar path and both crossed the original path of Hurricane Charley.

The survey of insurers done by OIR revealed approximately 105,000 residential property policies having two or more claims filed against it.[12] Additionally, insurers answering the survey's questions identified approximately 29,000 policies (out of the 105,000 policies) where homeowners had to pay two or more hurricane deductibles. However, insurers were not able to identify whether homeowners had to pay two or more hurricane deductibles on almost 19,000 policies of the 105,000 policies identified as having two or more claims. In other words, the 29,000 figure may increase as multiple deductibles are applied on some of the 19,000 policies. The 29,000 figure may also increase as more claims are adjusted and another hurricane deductible is applied to claims not identified in the 105,000 figure.

For the 29,000 policies identified where the homeowner had to pay two or more hurricane deductibles, insurers estimated homeowners paid approximately $55.5 million for the second, third, or fourth deductible.[13] This figure could increase as insurers are able to identify how many of the19,000 policies with multiple claims are actually charged two or more hurricane deductibles.

Importantly, the survey only captured information on the dollar value of claims where the homeowner incurred two or more full hurricane deductibles. No information is available on the dollar value of claims for homeowners incurring one full hurricane deductible from one hurricane but who incurred damage from another hurricane(s) in an amount less than their hurricane deductible. Likewise, no information is available on the dollar value of claims for homeowners incurring one full hurricane deductible only as a result of a combination of losses from more than one hurricane.

Homeowners/policyholders may not have been charged more than one hurricane deductible even though their residence was damaged by more than one hurricane this year for many reasons. For example, by the time adjusters saw many damaged properties for the first time, two or more hurricanes had caused damage, and it was difficult or impossible to separate the damage caused by each event. A number of insurers resolved the ambiguity as to which hurricane caused which damage in favor of their policyholders by waiving the application of multiple deductibles. Additionally, some insurers might have triggered CAT Fund coverage and their waiving of the second, third, or fourth hurricane deductible might be a cost that is passed on to the CAT Fund in losses. Other insurers who did not trigger the CAT Fund or which exhausted their CAT Fund limits may end up absorbing the cost of waiving policyholder multiple deductibles or, in some cases, passing the cost along to their private reinsurers.

Reimbursement from the State of Florida for Multiple Hurricane Deductibles

Even though some insurers waived multiple hurricane deductibles for some or all policyholders, other policyholders still had to absorb the cost of multiple deductibles and could face severe financial hardship as a result of the multiple deductibles they were required to pay. In order to aid many homeowners/policyholders who had losses amounting to more than one hurricane deductible due to the four hurricanes hitting Florida in 2004, the bill establishes a reimbursement program.

The bill requires DFS to 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,

[12] Presentation by the Office of Insurance Regulation to Florida House of Representatives Insurance Committee on December 2, 2004. The survey was conducted from November 12, 2004 through November 18, 2004. Results were published by OIR on November 23, 2004.

[13] i.e. The out-of-pocket hurricane deductible cost to policyholders for the 29,000 policies being charged more than one hurricane deductible is estimated to be $55.5 million. On December 9, 2004, OIR revised the dollar amount of multiple deductibles charged to policyholders from $55.5 million to an estimated $62.5million to reflect additional insurer reporting information. The additional insurer reporting did not report information on the number of policies charged two or more hurricane deductibles. Thus, the 29,000 policy figure was not changed on December 9, 2004.

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 for verifying 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.
- The policyholder must 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.

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, 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. 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.

Reimbursement is also not allowed for losses paid by a grant from the Federal Emergency Management Agency or other federal, state, or local governments or programs.

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. 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 (i.e. "full deductible" claims).

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, DFS must then reimburse all other eligible policyholders (i.e. "partial deductible" 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 reimbursement claim that is approved. Though not stated, this implies that DFS must wait until the March 1, 2005 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; Data Collection -- The insurer that issued the policy to an applicant for reimbursement must provide to DFS, 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).

DFS also may 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 DFS 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 DFS implement the reimbursement program as soon as possible, the department may adopt emergency rules pursuant to s. 120.54(4), F.S., (Administrative Procedure 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.

The bill requires OIR to 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 DFS may require.

Fraud; Insurance Code Violation – The bill empowers DFS to investigate and prosecute fraudulent activity relating to the reimbursement program. It also provides 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 program established by the bill.

C. SECTION DIRECTORY:

Section 1: Provides legislative findings, intent, and public purpose language for the reimbursement of multiple hurricane deductibles by the state.

Section 2: Creates an unnumbered section of the Florida Statutes outlining a process for homeowners/policyholders to obtain reimbursement from the state for losses from hurricanes if the losses amount to more than one hurricane deductible.

Section 3: Amends s. 627.701, F.S., to require an annual hurricane deductible under specified circumstances.

Section 4: Clarifies the change in the annual hurricane deductible provided for in Section 3 applies only to residential insurance policies issued or renewed on or after May 1, 2005.

Section 5: Transfers up to $150 million to the Insurance Regulatory Trust Fund in DFS from the CAT Fund for use in paying eligible reimbursements for hurricane deductibles. Appropriates the money as nonrecurring revenue. Authorizes DFS to use part of the money to administer the reimbursement program. Specifies that funds remaining in the Insurance Regulatory Trust Fund after September 30, 2005 revert to the CAT Fund. Authorizes the CAT Fund to recoup funds and associated investment income used for hurricane deductible reimbursement by increasing assessments over a 5-year period.

Section 6: Specifies that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Nonrecurring	FY 2004-05
Department of Financial Services	
Transfer from CAT Fund	
Insurance Regulatory Trust Fund	$150,000,000

2. Expenditures:

	FY 2004-05
Nonrecurring	
Department of Financial Services	
Special Category: Hurricane Multiple Deductible Reimbursement	
Insurance Regulatory Trust Fund	$150,000,000

(See D. Fiscal Comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

   There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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. The amount of reimbursement to each individual homeowner/policyholder and to condominium associations will vary and will depend on the hurricane deductible the residential property insurance requires and the policyholder's amount of loss.

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. 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 CAT Fund by the amount appropriated and transferred from the CAT Fund for the reimbursement program, plus loss of investment income, divided over a 5-year period. Insurers are permitted to recoup CAT Fund premiums in the premiums they charge to residential policyholders, subject to approval by OIR.

Changing the hurricane deductible from a per peril deductible to an annual deductible may increase the premium homeowners pay for residential property insurance by 1-3 percent. Homeowners should; however, benefit from the change as they will be no longer subject to multiple deductibles.

D. FISCAL COMMENTS:

The bill transfers $150 million from the CAT Fund to DFS, Insurance Regulatory Trust Fund to fund the program. The funds are appropriated in a special appropriation category from the Insurance Regulatory Trust Fund to be used for reimbursement to homeowners/policyholders under the program. It is unknown whether $150 million is adequate to reimburse all eligible policyholders in full. The bill allocates 1% ($1,500,000) of the $150 million total appropriation to DFS for expenses associated with implementation and administration of the reimbursement program.

The appropriation from the CAT Fund is made, notwithstanding the current requirements of s. 215.55, F.S., that limit the use and amount of CAT Fund funds. Specifically, the bill directs the State Board of Administration (SBA) to transfer, no later than January 15, 2005, $20 million from the CAT Fund 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 CAT Fund 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 1percent ($1.5 million) of the appropriation may be used by the department for administration of the reimbursement program. All CAT Fund monies transferred to the Trust Fund that are unexpended on December 31, 2005, shall revert to the CAT Fund.

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 CAT Fund in s. 215.555, F.S., the State Board of Administration must increase future CAT FUND premiums by the amount appropriated and transferred from the CAT Fund pursuant to this section, plus any additional amount necessary to recover lost investment income, minus any refunds of unused cash to the CAT Fund. The increase in future premiums shall be divided in equal or approximately equal amounts over a 5-year period beginning with the June 1, 2006 contract year.

Program Cost Estimation: Although data collected by OIR estimates homeowners paid $55.5 million for multiple deductibles, the data collected was on the dollar value of claims only for homeowners who incurred the full amount of the deductible more than one time. No data is available on the dollar value of claims for homeowners who incurred one full hurricane deductible from one hurricane and who incurred damage from another hurricane(s) in an amount less than their hurricane deductible. Likewise, no data is available on the dollar value of claims for homeowners who incurred one full hurricane deductible only as a result of a combination of losses from more than one hurricane. All three groups of homeowners would be eligible for reimbursement under the bill. Accordingly, there is no data estimating how much the reimbursement program would cost when all three groups of homeowners are included.

Despite the difficulty in calculating the exact cost of the program given the limited data available, the following formula was used in order to calculate how much the program would cost to reimburse one group of eligible homeowners (those who incurred the full amount of the deductible more than one time):[14]

The number of policies where it is known that 2 or more claims were filed:
105,000 policies – 19,000 policies = 86,000 policies

The percentage of policies with 2+ claims where homeowners had to pay 2+ deductibles:
29,000 policies ÷ 86,000 policies = 34%

Number of “unknown” policies likely to have 2+ deductibles applied:
19,000 policies x 34% = 6,460 policies

Average dollar amount of 2+ deductibles paid by homeowners:
$55,500,000 ÷ 29,000 policies = $1,914

Aggregate dollar amount of the number of “unknown” policies likely to have 2+ deductibles applied:
$1,914 x 6,460 policies = $12,364,440

[14] This is the only group of eligible homeowners data exists for.

Cost Components	Number of Policies	Total Cost
Multiple deductibles on claims paid	29,000	$55,500,000
Additional multiple deductibles estimated for claims filed, but not paid, by mid-Nov	6,460	$12,364,440
Additional multiple deductibles estimated on claims filed after mid-Nov	Unknown	$6,000,000
Funds availability assurance		$74,635,560
1% administrative expenses at DFS		$1,500,000
Total Estimated Cost		$150,000,000

Given questions as to the completeness and consistency of the data collected by OIR and the fallacies inherent in using averages, approximately $6 million was added to the subtotal in order to account for any additional claims filed or adjusted since the data was collected in mid-November 2004. A total of $75 million is the estimated amount needed to reimburse **only** homeowners who incurred the full amount of the deductible more than one time. The bill allows reimbursement for other homeowners as well. Unfortunately, there is no way to account for the other homeowners in the program cost formula because no information is available on the other two groups of homeowners. Thus, an additional $75 million was added to assure all other homeowners eligible for the reimbursement program will be compensated.

Administrative Costs:

The department has provided only initial, rough estimates of the amount that may be needed to implement the reimbursement program. The reason for the rough estimates is the lack of information regarding the number of claims which would qualify for the reimbursement 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 as both insurance claims have already been adjusted and paid by the insurer, minus the deductible. The survey results from OIR indicate 29,000 "full deductible" claims have been identified. The formula set out above estimates another 6,460 "full deductible" claims, for a total of 35,460 "full deductible" claims. The total estimated administrative costs associated with reimbursing these claims is $531,900 ($15/hour x 1 hour x 35,460 claims).

It is even less clear what expense DFS 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, DFS's 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Financial Services is permitted to adopt emergency rules to implement the reimbursement process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2004, the Insurance Committee adopted four amendments to the bill. The amendments:

- changed the effective date for the annual hurricane deductible from May 1, 2005 to June 1, 2005 to allow insurers additional time to change their policies to reflect the annual hurricane deductible and to give policyholders the statutorily required 45-day notice of the change.
- clarified that homeowners cannot be reimbursed under the program for amounts the homeowner received from federal, state, or local governments or programs. This prevents double-dipping by consumers. Reimbursement to condominium associations is not allowed for losses assessed by the association to unit owners.
- clarified that homeowners must have filed all claims for damage for which they want to be considered for reimbursement by December 1, 2004.
- clarified that if DFS has to reimburse some homeowners on pro rata basis, then each homeowner qualifying for pro rata reimbursement will get the same percentage of their claim reimbursed.

The bill, as amended, was reported favorably with a committee substitute.

On December 14, 2004, the Commerce Council adopted sixteen amendments to the bill. The amendments:

- changed the legislative findings to conform with the Senate bill.
- clarified the reimbursement limit.
- removed the requirement that all claims must be filed by December 1, 2004 in order to qualify for the reimbursement program.
- clarified documentation that is required to be submitted by the applicant to support a claim for reimbursement.
- made conforming changes.

- required homeowners to meet a $100 deductible in order to be eligible for reimbursement for each qualifying storm.

- removed reimbursement language contained in the House bill in order to conform it with the Senate bill.

- removed House language that prevents homeowners from receiving reimbursement from the program when the homeowner "will receive or has otherwise qualified" for a grant from FEMA.

- strengthened the language preventing double-dipping by condominium associations.

- adopted the Senate language establishing the priority for reimbursement. Policyholders who have met at least two full hurricane deductibles will be reimbursed first. All other applicants will be reimbursed on a pro rata basis from the remaining funds.

- deleted an inappropriate cross reference.

- clarified the pro rata reimbursement language.

- provided it is a violation of the Insurance Code for an insurer to change its method of determining whether to waive or apply multiple hurricane deductibles to multiple claims due to the reimbursement program. The amendment also requires OIR to collect claims data from insurers.

- changed the effective date of the new annual hurricane deductible from June 1, 2005 to May 1, 2005 in order to conform it to the Senate bill.

- replaced funding of the reimbursement program from General Revenue with the Florida Hurricane Catastrophe Fund (CAT Fund). Increases the amount of funding from $100 million to $150 million. Requires the CAT Fund to replenish the $150 million appropriated and transferred by increasing future CAT Fund premiums. Requires the CFO to periodically report information regarding reimbursement of multiple deductibles to Governor and LBC.

The bill, as amended, was reported favorably with a committee substitute.