



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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, 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.<sup>1</sup> 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.

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<sup>1</sup> 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?](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.<sup>2</sup> Residential property losses are estimated at \$14.5 billion.<sup>3</sup>

## Hurricane Deductibles

Hurricane deductibles on residential property insurance are typically percentage deductibles (usually 2% or 5% of the policy dwelling limits) and apply only for losses from a formally designated hurricane system.<sup>4</sup> 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.<sup>5</sup>

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 boldfaced 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.<sup>6</sup> According to numbers released by the Florida Hurricane Catastrophe 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 one million units had deductibles of \$500 (26 percent). Therefore, about 300,000 homes statewide have deductibles of 5 percent or higher.<sup>7</sup>

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.<sup>8</sup>

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<sup>2</sup> 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.

<sup>3</sup> This figure is based on estimates from hurricane models.

<sup>4</sup> 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.

<sup>5</sup> s. 627.701(3), F.S. (2004).

<sup>6</sup> Hurricane Insurance Information Center at <http://www.disasterinformation.org/deductibles.htm>.

<sup>7</sup> Hurricane Insurance Information Center at <http://www.disasterinformation.org/deductibles.htm>; Insurance Information Institute at <http://www.iii.org/media/hottopics/insurance/hurricanewindstorm/>.

<sup>8</sup> Hurricane Insurance Information Center at <http://www.disasterinformation.org/deductibles.htm>.

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. 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.

Changing the residential property insurance hurricane deductible to an annual one may increase homeowner's residential property insurance premiums by 1-3%.<sup>9</sup> 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.<sup>10</sup>

### **Multiple Hurricane Deductibles**

During the 2004 hurricane season, many homeowners in Florida sustained damage to their homes from more than one hurricane.<sup>11</sup> 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, 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 the Office of Insurance Regulation (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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<sup>9</sup> Testimony received at the House of Representatives Insurance Committee meeting December 2, 2004 from a representative of State Farm Insurance Company.

<sup>10</sup> 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))

<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> This figure could increase as insurers are able to identify how many of the 19,000 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 Florida Hurricane Catastrophe Fund (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 reimbursement program will be implemented by the Department of Financial Services (DFS) who is given authority in the bill to establish emergency rules to implement the reimbursement.

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<sup>12</sup> 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.

<sup>13</sup> 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.

Only homeowners/policyholders meeting the eligibility requirements set forth in the bill will be eligible for reimbursement from the state. In order to be eligible, the homeowner/policyholder must:

1. own residential property in Florida covered by a residential property insurance policy,
2. have property damage from two or more hurricanes in 2004,
3. have filed a claim for the property damage with their insurer by December 1, 2004,
4. have an insurance company that applied more than one hurricane deductible to insurance claims resulting from two or more hurricanes,
5. property damage from any one or all storms amounting to more than one hurricane deductible,
6. apply to DFS for reimbursement by March 1, 2005, and
7. authorize DFS to obtain information from its insurer related to the reimbursement claim.

The bill creates restrictions on reimbursement. Reimbursement is limited to the amount of hurricane deductible the homeowner/policyholder paid for the second, third, 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. The maximum reimbursement amount for condominium associations is \$3,000 per condominium unit. Reimbursement is not allowed for losses paid by a grant from Federal Emergency Management Agency.

The bill creates a priority for reimbursement. Homeowners incurring at least one full hurricane deductible are paid first. Homeowners incurring one full hurricane deductible only as a result of a combination of losses from more than one hurricane are to be paid on a pro rata basis, if any money is left over from the appropriation.

The bill requires insurers to notify policyholders of the reimbursement program.

The bill requires insurers provide documentation from the homeowner's/policyholder's claims file upon request by DFS and authorization of the homeowner/policyholder.

The bill empowers DFS to investigate and prosecute fraudulent activity relating to the reimbursement program.

The bill authorizes DFS to contract with third parties to investigate or adjust claims as needed to allow DFS to determine eligibility for reimbursement.

#### 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 providing a process for homeowners/policyholders to obtain reimbursement from the state for losses from hurricanes amounting to more than one hurricane deductible.
- Section 3: Amends s. 617.201, F.S. to require an annual hurricane deductible in some cases.
- 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: Appropriates \$100 million from General Revenue to fund the reimbursement process created by Section 2.
- Section 6: Provides an effective date of "upon becoming law."

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill requires a \$100 million transfer of funds from General Revenue to DFS to fund the program. The funds are appropriated in a special appropriation category to be used for reimbursement to homeowners/policyholders under the program.

The bill allocates 1% (\$1,000,000) of the \$100 million total allocation to DFS for expenses associated with implementation and administration of the reimbursement program.

According to DFS, \$2,060,000 is needed to implement the reimbursement program, broken down as follows:

- \$435,000 to process applications from homeowners who paid a hurricane deductible for more than one hurricane,
- \$570,000 to process applications from homeowners who paid a hurricane deductible for one hurricane but sustained damage in a subsequent hurricane less than the hurricane deductible
- \$855,000 to process applications from homeowners who never paid a hurricane deductible but sustained damage from all hurricanes totaling more than their hurricane deductible, and
- \$200,000 for physical inspection of property by DFS to obtain any additional information needed to approve or deny a homeowner's application for reimbursement.

The Department of Financial Services believes processing applications for homeowners who paid a hurricane deductible for more than one hurricane will be relatively easy because verification of the multiple hurricane deductible would already exist. Thus, DFS believes it will take only one hour per application to process an application for this group of homeowners. By contract, DFS currently pays employees working on the department's 1-800 hotline for hurricane-related issues \$15/hour and estimates employees processing the reimbursement applications would be paid the same hourly rate. The department estimates approximately 29,000 homeowners paid a deductible for more than one hurricane based on the survey done by OIR. Thus, the total cost for processing applications for reimbursement for these homeowners is \$435,000 (\$15/hour x one hour x 29,000 applications).

The Department estimated there are approximately 76,000 other homeowners who would qualify for the reimbursement program based on OIR's survey. These homeowners would qualify because they paid a hurricane deductible for one hurricane but did not pay another hurricane deductible because the damage sustained in subsequent hurricane(s) was less than their hurricane deductible or because the damage they sustained from each hurricane was less than their hurricane deductible, but the total damage from all hurricanes is more than their hurricane deductible. The department does not believe it will have to physically inspect property or hire adjusters to adjust claims for these groups of applicants because the bill requires the homeowner to have filed a claim for the property damage by December 1, 2004. Thus, insurers would likely have adjusted the claim.

The department estimates there are approximately 38,000 claims where homeowners paid a hurricane deductible for one hurricane but did not pay another hurricane deductible because the damage sustained in subsequent hurricane(s) was less than their hurricane deductible. They further estimate it will take approximately 1.0 hour per application to process applications for reimbursement from these homeowners. At \$15/hour, the total cost of administering the program for these 38,000 applicants is \$570,000 ( $\$15/\text{hour} \times 1 \text{ hour} \times 38,000 \text{ applications}$ ).

The department estimates there are approximately 38,000 claims where the damage the homeowner sustained from each hurricane was less than their hurricane deductible, but the total damage from all hurricanes is more than their hurricane deductible. They further estimate applications from this group will take approximately 1.5 hours per application to process due to additional time required to compute and verify the hurricane deductibles. At \$15/hour, the total cost of administering the program for these 38,000 applicants is \$855,000 ( $\$15/\text{hour} \times 1.5 \text{ hours} \times 38,000$ ).

Although DFS uses 76,000 for the purpose of determining some of the cost of administration of the program, a better estimate is approximately 70,000. The latter figure reflects a reduction of approximately 6,000, an estimate of the additional policyholders who paid two or more hurricane deductibles based on the formula set out below. Using 70,000 as the number of applicants, the cost becomes \$1,312,500 ( $\$15/\text{hour} \times \text{one hour} \times 35,000 \text{ applications} = 525,000$  &  $\$15/\text{hour} \times 1.5 \text{ hours} \times 35,000 \text{ applications} = 787,500$ ) instead of \$1,425,000 and the total cost of the program becomes \$1,947,500 instead of \$2,060,000.

#### 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:

Private citizens (homeowners/policyholders) approved for reimbursement will receive money from the State to reimburse them for the amount of hurricane deductible paid for the second, third, or fourth hurricane deductible **or** the amount of loss they had after incurring one full hurricane deductible, up to a maximum of \$10,000 for each hurricane after the first one. The amount of reimbursement to each individual homeowner/policyholder will vary and will depend on the hurricane deductible the homeowner's/policyholder's residential property insurance requires and the homeowner's/policyholder's amount of loss.

Condominium associations are also eligible for reimbursement under the program. The amount of reimbursement to condominium associations will vary depending on the hurricane deductible in their commercial residential insurance policy and how much the association paid for hurricane deductibles. The maximum reimbursement to condominium associations; however, is limited by the bill to \$3,000 per condominium unit.

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:

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):<sup>14</sup>

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

Subtotal cost of reimbursement program:  
\$55,500,000 + \$12,364,440 = \$67,864,440

Subtotal with 1% for administrative expenses:  
\$67,864,440 + \$ 750,000 = \$68,614,440

Total cost of reimbursement program:  
\$68,614,440 + \$6,385,560 = \$75,000,000

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, 2005. The \$75,000,000 cost 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 \$25 million was added to assure all other homeowners eligible for the reimbursement program will be compensated.

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<sup>14</sup> This is the only group of eligible homeowners data exists for.

### 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

None.