

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: SB 1158

SPONSOR: Senator Klein

SUBJECT: Property and Casualty Insurance

DATE: April 14, 2005

REVISED: 4/19/2005

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>CA</u>	<u></u>
3.	<u></u>	<u></u>	<u>CU</u>	<u></u>
4.	<u></u>	<u></u>	<u>GA</u>	<u></u>
5.	<u></u>	<u></u>	<u>RC</u>	<u></u>
6.	<u></u>	<u></u>	<u>WM</u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

Senate Bill 1158 makes changes to the laws relating to property insurance, primarily affecting residential property insurance, as follows:

Low-interest loan program for hurricane loss mitigation -- Requires the Department of Community Affairs (DCA) to establish a low-interest loan program, by direct loans or loan guarantees, for mobile home and residential homeowners to retrofit their homes to reduce hurricane losses. A one-time appropriation for \$50 million from the General Revenue Fund for FY 2005-06 would be utilized by the DCA for these purposes along with an annual appropriation of \$7 million currently allocated for hurricane loss mitigation purposes from the Florida Hurricane Catastrophe Fund.

Policyholder Issues --

- Mandates insurers mail notices to policyholders of proposed rate filings which would result in an average statewide increase of 10 percent or greater;
- Allows policyholders to review rate filings and mandates the Office of Insurance Regulation (OIR or office) hold hearings on rate filings pursuant to policyholder requests;
- Authorizes consumer advocacy groups to participate in rate hearings on behalf of the public;
- Prohibits insurers from canceling or nonrenewing a policy based on only one claim or for any other reason other than a lawful underwriting reason, for a policyholder who has

- been continuously insured with that insurer or with an insurer within the same insurer group for 5 years or longer;
- Specifies a higher score on the reading ease test for insurance policies so that such policies are more understandable;
- Requires insurance policies to provide initial living expense payments be made to policyholders within 48 hours after a hurricane claim; and,
- Expands hurricane coverage to include damage from wind-driven water.

Public Counsel --

- Expands the role of the Public Counsel to represent the public before the OIR in insurer rate filings which request an average statewide increase of 10 percent or greater and in specified rules cases;
- The Public Counsel may do the following:
 - make recommendations to the office;
 - have access to all files, records, and confidential information of the office;
 - seek review of any determination, finding or order of the office; and,
 - make reports to the office, Governor and the Legislature.

Hurricane Deductibles --

- Requires insurers to offer deductibles for personal lines residential insurance of 1 percent and 5 percent, in addition to the current \$500 and 2 percent offers, and eliminates the exception to offering the \$500 deductible for most policies valued between \$100,000 and \$250,000;
- Increases the hurricane deductible cap on personal lines residential insurance from 2 to 5 percent for policies valued under \$100,000;
- Applies the above requirements for mandatory offer of deductibles to mobile homes.

Insurance Rating Law and Underwriting Rules --

- Repeals the law that allows an insurer to submit a rate filing to an arbitration panel after it has been disapproved by the Office of Insurance Regulation (OIR); and,
- Requires the OIR to approve all insurer underwriting rules for homeowners' insurance.

This bill substantially amends the following sections of the Florida Statutes: 350.061, 350.0611, 350.0612, 350.0613, 350.0614, 112.3145, 215.559, 408.40, 624.319, 627.062, 627.0629, 627.0651, 627.4025, 627.4133, and 627.701.

This bill creates the following sections of the Florida Statutes: 627.41494 and 627.70105.

II. Present Situation:

The 2004 Hurricane Season

Hurricanes Charlie, Frances, Ivan, and Jeanne struck Florida within a 45-day period between August 13 and September 26, 2004, causing extensive damage throughout the state. The Governor issued orders declaring a state of emergency during this period and the President of the United States declared most of Florida a federal disaster area.

As of March 29, 2005, insurance companies have reported to OIR that 1.7 million property insurance claims have been filed for the four hurricanes and that insurers have paid \$16.4 billion

in total claims payments. The companies estimate that the total expected gross property loss will reach \$22.8 billion. This figure includes residential, commercial (business), and auto losses, but not National Flood Insurance Program losses. But, this amount also includes the amount of losses below the deductible (not paid by the insurer), estimated at \$3.1 billion for residential deductibles alone, plus an unreported amount of deductibles for non-residential policies.

Office of Insurance Regulation (Property Insurance Rating Law; Public Hearings; Underwriting Rules; Arbitration; Insurance Issues)

The Office of Insurance Regulation (OIR or office) regulates the solvency, rates and forms for insurance companies transacting insurance in Florida or from offices located in the state. The OIR issues a certificate of authority (COA) to insurers before they can transact insurance in the state.¹

Rating Law -- Property and casualty insurers are required to file rates for approval with OIR either 90 days before the proposed effective date (“file and use”) or 30 days after the rate filing is implemented (“use and file”).² Under the file and use option, OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the “use and file” option, an insurance company may be ordered by OIR to refund to the policyholder that portion of the rate found by OIR to be excessive.

The OIR may disapprove a rate filing if it determines such rates to be “excessive, inadequate, or unfairly discriminatory” as these terms are defined. The law specifies numerous factors which the OIR must consider in making this determination.

If OIR disapproves a rate filing, the insurer may request an administrative hearing under the Administrative Procedures Act (ch. 120, F.S., A.P.A.). Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) of the Division of Administrative Hearings. Once the hearing is completed, the ALJ has 30 days to issue a recommended order to OIR. The recommended order contains findings of fact and conclusions of law as found by the ALJ. The OIR has 90 days to issue a final order which may reject or modify the conclusions of law contained in the recommended order. However, OIR’s final order may not substitute findings of facts contained in the recommended order which were supported by competent substantial evidence. An insurer may then appeal OIR’s final order to the First District Court of Appeal.

Public Hearings -- The current law provides that OIR must hold a public hearing on a residential property insurance rate filing that exceeds 25 percent, if the filing is based on data from a computer model.

Underwriting Rules – Currently, the underwriting rules for homeowners’ insurance are required to be filed with the OIR under s. 627.0651, F.S. The office does not have express authority to approve, amend or deny such rules.

¹ Section 624.401, F.S.

² Section 627.062, F.S.

Arbitration -- In 1996, the law was amended to allow property and casualty insurers to request binding arbitration of a rate filing as an alternative to an administrative hearing.³ After OIR issues a notice of intent to disapprove a rate filing, the insurer may request arbitration before a panel of three arbitrators. One arbitrator is selected by the insurer, one by OIR, and the third is chosen by the two other arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be the employee of any insurance company or insurance regulator. The procedures of the Arbitration Code (chapter 682, F.S.) apply, and the costs of arbitration are paid by the insurer. The decision of the panel, which must be made within 90 days, constitutes the final approval of a rate filing.

There is no appeal of the arbitration panel's decision to a higher court. However, either party may apply to the circuit court to vacate or modify the panel's decision under limited conditions. In general, grounds for vacating include corruption or fraud, evident partiality by a neutral arbitrator, and action beyond the arbitrators' powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration. Upon initiation of arbitration, the insurer waives all rights to challenge the action of OIR under the APA or any other law; however, these rights are restored to the insurer if the arbitrators fail to act within 90 days after initiation of arbitration.

According to OIR, as of October, 2004, 103 rate filings have been disapproved since the inception of arbitration in 1996. Of these 103 disapprovals, 11 had an arbitration hearing and decision. OIR states that it prevailed in only one case. In four cases, the insurer's requested rate change was approved by the arbitration panel. In the remaining six cases the panel's decision was an amount between those of the two parties. According to OIR, during this same period, very few insurers have litigated their rate filings under the APA. The vast majority of those insurers either settle their rate disputes with OIR or withdraw their filing.

Insurance Issues -- Currently, insurers must give insureds under homeowners' policies written notice of the nonrenewal, cancellation, or termination at least 90 days prior to the effective date of the nonrenewal, cancellation, or termination.⁴ Such notice must give the reason for the nonrenewal, cancellation, or termination with certain specified exceptions.

Under current law, there is no time limit as to when additional living expenses (ALE) are provided by insurers to insureds after a hurricane claim is filed. ALE traditionally covers housing, telephone, food and transportation expenses. However, after the major hurricanes struck Florida in 2004, the Financial Services Commission promulgated an emergency rule which established time frames for initial damage assessment, processing and settling of person lines residential property claims for insurers.⁵

Section 627.4145, F.S., requires every insurance policy to be 'readable' by mandating a minimum score of 45 on the "Flesch" reading ease test or any comparable test approved by the OIR. In general, the Flesch test requires contracts to contain terms and words of common usage and to avoid use of long complicated sentences and paragraphs by utilizing a formula set forth under the law.

³ The arbitration option is not available for private passenger motor vehicle insurance rate filings, which are subject to a different rating law in s. 627.0651, F.S. Also, the medical malpractice legislation enacted in 2003 provided that medical malpractice insurers were no longer permitted to use the arbitration process (ch. 2003-416, L.O.F.).

⁴ Section 627.4133, F.S.

⁵ 690ER04-19, enacted 10/26/04.

Public Counsel

The Public Counsel provides legal representation for the people of the state, primarily in proceedings before the Public Service Commission (PSC).⁶ The Public Counsel is appointed by a majority vote of the members of the Florida Legislature's Joint Legislative Auditing Committee, and serves at the pleasure of the committee, subject to annual reappointment. The duties of the Public Counsel include having access to and use of all files, records, and data of the PSC or counties which are available to any attorney representing parties in a proceeding before the PSC or counties; making recommendations to the PSC or the counties in any proceeding or action before such entities; in any proceeding in which the Public Counsel is a party, to seek review of any determination, finding or order of the PSC or counties; to prepare reports and make recommendations to the PSC, the Governor, and the Legislature; and to appear before other state and federal agencies and state and federal courts.

The Office of Public Counsel is currently composed of fifteen positions, six of which are experienced members of the Florida Bar. The office also includes analysts who are experienced in utility matters, as well as administrative support staff.⁷

Consumer Advocate

Current law requires the Chief Financial Officer to appoint a consumer advocate to represent the general public before Department of Financial Services (DFS or department) and the Office of Insurance Regulation (OIR or office).⁸ The consumer advocate reports directly to the CFO, but is not otherwise under the authority of the department. The powers of the consumer advocate include recommending to the DFS or OIR the commencement of any proceeding or action; appearing in any proceeding or action before the DFS or OIR, or before the Division of Administrative Hearings relating to subject matter under the jurisdiction of the department or office. The powers also include examination of rate and form filings submitted to the office, hiring consultants as necessary to aid in the review process, and recommending to DFS or OIR any position the consumer advocate deems to be in the public interest. The consumer advocate must prepare an annual budget for presentation to the Legislature by the DFS, which must be adequate to carry out the duties of the office.

The current consumer advocate, who has been in his current position for approximately 1 year, has intervened in the workers' compensation rate filing made on behalf of all carriers, but has not otherwise intervened in another rate filing. In addition to the consumer advocate, the office is staffed with one attorney, two analysts, and an administrative assistant.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) was created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.⁹ All insurers who write residential property insurance in Florida are required to buy coverage from the FHCF to

⁶ Sections 350.061-350.064, F.S. The Florida Public Service Commission regulates the areas of telecommunications, electricity, natural gas, and water/wastewater. The Public Counsel also provides legal representation before counties pursuant to s. 367.171(8), F.S. (relating to water/wastewater issues where a county has jurisdiction over the utility instead of the PSC). The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court. The budget of the Public Counsel is exempt from the Governor's budgeting and planning authority and neither the Governor nor the Department of Management Services has any authority over the Counsel's employees.

⁷ *Florida Public Service Commission, Review of Chapter 350, F.S.* Senate Interim Report (2005-115), Committee on Communications and Public Utilities.

⁸ Section 627.0613, F.S.

⁹ Section 215.555, F.S.

reimburse them for a portion of their residential hurricane losses. The Fund is a tax-exempt state fund administered by the State Board of Administration (SBA) that provides an additional source of reinsurance to insurers that is much less expensive than private reinsurance. This generally enables insurers to write more residential coverage in Florida than could otherwise be written and acts to lower premiums for consumers.

Hurricane Loss Mitigation

The law directs the Legislature to annually appropriate at least \$10 million from the FHCF, but no more than 35 percent of the investment income from the prior fiscal year for hurricane loss mitigation programs.¹⁰ Actual annual legislative appropriations have ranged from the minimum \$10 million to \$30 million. The Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA) was created in 1999, with an annual appropriation of \$10 million from the FHCF, to fund programs for improving the wind resistance of residences and mobile homes to prevent or reduce losses or reduce the costs of rebuilding after a disaster.¹¹ Three (\$3) million from the HLMP is statutorily directed to retrofitting public facilities to be used as hurricane shelters while the remaining \$7 million, is appropriated for the Residential Construction Mitigation Program (RCMP) administered by DCA and statutorily allocated as follows:

- 40 percent (\$2.8 million) is used to inspect and improve tie-downs for mobile homes;
- 10 percent (\$700,000) is directed to the Type I Center of the State University System dedicated to hurricane research, e.g., Florida International University; and
- The remainder (50 percent or \$3.5 million) is generally directed to programs developed by the DCA with advice from an Advisory Council to help prevent or reduce losses to residences and mobile homes or to reduce the cost of rebuilding after a disaster.

One of the programs funded by the \$3.5 million allocation directs grants targeting homes in the Governor's designated Front Porch communities to provide hazard mitigation upgrades to low-to-moderate income homes. Currently, the RCMP does not have any low-interest loan programs.

Hurricane Deductibles

The Legislature authorized the use of separate, percentage hurricane deductibles for residential policies in 1993 after Hurricane Andrew. Section 627.701, F.S., establishes the maximum and minimum hurricane deductibles that are allowable and mandates that insurers offer hurricane deductibles of specified amounts. The Legislature's expressed purpose in allowing for higher hurricane deductibles is to limit premium increases and to increase the availability of coverage.

The law generally requires insurers to offer homeowners a hurricane deductible of 2 percent of the dwelling limits, but for homes valued under \$100,000, the insurer must also offer a \$500 hurricane deductible. About 76 percent of the homes in Florida have a 2 percent hurricane deductible. For example, a home insured for \$200,000, would have a \$4,000 deductible for hurricane damage. For homes valued at \$100,000 or greater, insurers generally do not offer a homeowner a hurricane deductible lower than the 2 percent deductible that must be offered, but some insurers do so. Insurers are generally allowed to offer hurricane deductibles as high as 5 percent of policy limits, but are prohibited from offering higher amounts, except for homes valued in excess of \$500,000 for which no maximum limit applies. About 5 percent of the homes in Florida have a 5 percent deductible. The following table summarizes the current law.

¹⁰ Section 215.555(7), F.S.

¹¹ Section 215.559, F.S.

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

Dwelling Limits	Minimum Deductible Allowed	Maximum Deductible Allowed**	Specific Mandatory Offerings
0-\$24,999	\$250.00	2%	None
\$25,000-50,000	\$250.00	2%	\$500 & 2%
\$50,001-99,999	\$500.00	2%	\$500 & 2%
\$100,000-249,999	\$500.00	5%	2% (and \$500*)
\$250,000-500,000	\$500.00	5%	2%
\$500,001 and up	\$500.00	Unlimited	2%

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

**Commercial Residential Policies: For all values, a 5 percent maximum deductible is allowed for condominium association and cooperative association policies and a 10 percent maximum deductible is allowed for other commercial lines residential policies (e.g., apartment buildings). The insurer must offer a 3 percent deductible. (s. 627.701(8), F.S.).

“Grandfather” Exception: Notwithstanding the hurricane deductible limits summarized above:

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

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

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

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

Mandatory Annual Hurricane Deductibles -- Legislation enacted in the 2004 Special Session A, requires that for residential property insurance policies issued or renewed on or after May 1, 2005, the hurricane deductible must be applied on an annual basis to all hurricanes that occur

during the calendar year, rather than to each hurricane.¹² However, insurers are allowed to apply the “other perils” deductible, which is typically \$500, or the remaining amount of the hurricane deductible, whichever is greater, to a loss for each subsequent hurricane that year.

The new law applies to both personal lines residential policies (homeowners, mobile homeowners, etc.) and commercial residential policies (condominium associations, apartment buildings, etc.). Although the premium impact on personal lines policies is expected to be small (about 1 to 3 percent), it is likely to be much greater for condominium association policies. On March 18, 2005, the Senate passed CS/SB 1486 (in House Messages) which provides that the mandatory annual deductible would be limited to personal lines residential policies issued on or after May 1, 2005. For commercial residential policies issued or renewed on or after January 1, 2006, the insurer would be required to offer the policyholder the option of an annual hurricane deductible and a hurricane deductible that applies to each hurricane.

III. Effect of Proposed Changes:

Section 1 through Section 6. Amends ss. 350.061-350.0614, F.S. relating to the Public Counsel. The bill transfers these sections and renumbers them as ss. 11.402-11.406, F.S. The bill provides that the Public Counsel will represent the general public before the Office of Insurance Regulation (OIR or office) to recommend to the OIR, by petition, the commencement of, and to appear in the name of the state or its citizens in, any proceeding or action before the office relating to:

- Rules governing residential property insurance; or,
- Rate filings for residential property insurance which, pursuant to standards determined by the OIR, request an average statewide rate increase of 10 percent or greater as compared to the current rates in effect or the rates in effect 12 months prior to the proposed effective date.

The Public Counsel is given authority to employ actuaries and economists; to be furnished copies of all relevant filings by the OIR; and to maintain his or her office at a place convenient to the Public Service Commission (PSC) and the OIR. The Public Counsel may not stay a final order of the office. Further, the Public Counsel is authorized to carry out all duties he or she is currently responsible for (in relation to the Public Service Commission) with the OIR.

Proponents of the bill state that in California, the public counsel position is established to represent the general public in insurance rate and other matters.

According to representatives of the OIR, the effect of interjecting the Public Counsel into matters currently regulated by the OIR Commissioner will just increase regulatory costs for the agency and ultimately for the policyholder. The extra costs for holding public hearings and other costs associated with the bill’s impact are estimated under the Governmental Sector Impact.

Representatives with the OIR also argue that the Consumer Advocate, as explained above under Present Situation, currently has authority to represent the public before the OIR and the Department of Financial Services (DFS) and that it is unnecessary to have a Public Counsel duplicate the actions of the Consumer Advocate.

¹² Chapter 2004-480, L.O.F.

Section 7. Amends s. 215.559, F.S., relating to the Hurricane Loss Mitigation Program (program) under the Department of Community Affairs (DCA). The bill changes the current dollar allocation under the program by providing:

- a) \$1 million to mobile homes and \$6 million to residences to be used to improve the wind resistance of such homes and residences to prevent or reduce losses or reduce the cost of rebuilding after a disaster;
- b) the DCA to establish a low-interest loan program with the \$7 million allocated under a) to qualified owners of mobile homes and residences to finance efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster. A ‘low-interest loan’ means any direct loan or loan guarantee issued or backed by the authorized funds with a requirement for repayment by the mobile home or residential home owner and further provides that such loans must be made at a rate of up to 2 percent below the qualified loan rate as determined by the DCA. Such other loan criteria shall be determined by the DCA.

Section 8. Amends s. 408.40, F.S., to correct a cross-reference to the Public Counsel.

Section 9. Amends s. 624.319, F.S., pertaining to examination and investigation reports of the DFS or OIR. The legislation provides that the Public Counsel shall have access at any time to confidential and exempt information (under the Public Records Act, ch. 119, F.S.) obtained by DFS or the OIR pertaining to residential property insurance.

Section 10. Amends s. 627.062, F.S., relating to arbitration of property and casualty insurance rates to be effective upon the bill becoming law. The legislation repeals the provisions that allow an insurer to submit a rate filing to an arbitration panel for final disposition after the filing has been disapproved by OIR. The insurer would still be permitted to demand an administrative hearing under s. 120.57, F.S.

Section 11. Amends s. 627.0629, F.S., relating to approval of underwriting rules by the OIR for homeowners’ insurance. The bill provides that the underwriting rules for homeowners’ insurance not contained in rating manuals shall be filed with the office (this provision is current law under s. 627.0651(13), F.S., and is transferred to this section). The bill provides that all underwriting rules for homeowners’ insurance must be approved by the office and be reasonable and comply with applicable provisions of law. The filing and form-approval provisions under s. 627.410, F.S., apply to the filing and approval of underwriting rules for homeowners’ insurance.

Section 12. Amends s. 627.0651, F.S., relating to the making and use of rates for motor vehicle insurance. Corrects a cross-reference.

Section 13. Amends s. 627.4025, F.S., to expand the definition of ‘hurricane coverage’ to include damage from wind-driven water. Specifically, hurricane coverage would include damage to the interior of a building, or to property inside a building, which is caused by wind-driven water entering the building during a hurricane. Currently, insurance policies will often cover wind driven rain only if it enters a “breach” in the structure caused by the windstorm, such as a broken window or part of the roof being blown off. But, the policy may not cover damage caused by wind-driven rain that is blown through gaps in a sliding glass door that is not “breached” or broken by the windstorm.

This provision of the bill is believed to be intended to require policies to cover wind-driven rain even if there is not a breach in the structure. But, it could be interpreted to require coverage for loss that has previously been considered “flood loss.” Citizens Property Insurance Corporation is currently the largest writer of property that could be subject to “wind driven water” in the form of storm surge. This expanded definition could have the effect of causing significant loss expense for Citizens.

Section 14. Amends s. 627.4133, F.S., (to be effective upon the act becoming law) relating to notice of cancellation, nonrenewal, or renewal of premium. The bill provides that an insurer may not cancel or nonrenew a residential property insurance policy based on only one claim under the policy, or for any other reason other than a lawful underwriting reason as filed with the office, for a policyholder who has been continuously insured with that insurer or with an insurer within the same insurance group for 5 years or longer.

Section 15. Amends s. 627.4145, F.S., pertaining to readable language in an insurance policy. The bill raises the ‘Flesch’ reading ease test score from 45 to 50. The effect of raising this score should make insurance policies more understandable and “readable” to the policyholder as required under this section.

Section 16. Creates s. 627.41494, F.S., to require insurers to mail notice to each of its policyholders or members of any proposed rate filing for residential property insurance which would result in an average statewide increase of 10 percent or more as compared to rates in effect for the prior 12 months. The bill also provides that: a) rate filings be available for public inspection; b) policyholders may request (within 30 days) a public hearing on a rate filing and the OIR must hold such hearing; c) the Public Counsel or any consumer advocacy group may participate in the public hearing; d) the Financial Service Commission (FSC) may make rules governing such participation; e) a “consumer advocacy group” be defined to be at least 1,000 members along with other criteria; f) the advocacy group be permitted to appear in administrative hearings, examine rate filings, and make recommendations to the office; g) and the OIR must order an insurer to pay reasonable costs of the advocacy group if the office determines that the group made a relevant and substantial contribution to the final order on the rate filing.

Section 17. Amends s. 627.701, F.S., relating to deductibles for residential property insurance coverage.

The bill provides that: a) the hurricane deductible cap on personal lines residential insurance is increased from 2 percent to 5 percent of policy dwelling limits for homes valued below \$100,000. The bill retains the current maximum 5 percent deductible for homes valued between \$100,000 and \$500,000, and the current unlimited maximum deductible for homes valued in excess of \$500,000.

The bill requires that for personal lines residential policies issued on or after March 1, 2005, insurers must offer deductibles of 1 percent and 5 percent of dwelling limits, in addition to the \$500 and 2 percent deductibles that must currently be offered. The bill also deletes an exception to offering the \$500 deductible that currently applies to most policies valued between \$100,000 and \$250,000. The \$500 deductible would not be required to be offered to homes valued in excess of \$250,000, but hurricane deductibles must be offered at 1 percent, 2 percent and 5 percent. Insurers would not be required to offer any percentage deductible that is less than \$500.

The bill updates the statute by striking the term “wind” and clarifying that the statute applies only to deductibles for “hurricane losses.” A transitional provision in the current law has already required insurers to update their policies accordingly.

Section 18. Creates s. 627.70105, F.S., relating to hurricane coverage. The bill requires that each insurance contract providing hurricane coverage must include a provision that if the insured residential property becomes uninhabitable due to damage from a hurricane and the insurer is liable for living expenses of the insured while the property remains uninhabitable, the initial living expense payments must be delivered to the insured no later than *48 hours* after a claim is made with the insurer

Section 19. Appropriates \$50 million for fiscal year 2005-2006 on a nonrecurring basis from the General Revenue (GR) Fund to the Department of Community Affairs in a special category termed “Residential Hurricane Mitigation Low-Interest Loan Program” for the loan program established under Section 7 of this bill. The funds shall be subject to the release provisions of chapter 216, F.S., and up to 0.5 percent of the appropriation may be used by the DCA for administration of this loan program.

Section 20. Except as otherwise provided, this act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Requiring insurers to offer \$500 and 1 percent deductibles would give consumers an option, at a higher premium, to lower their potential out-of-pocket expense after a hurricane, as compared to the 2 percent deductible. But, requiring insurers to offer lower deductibles may reduce the capacity of insurers to write policies in this state, depending on the premium charged for the lower deductible and the number of policyholders who elect it. Lower deductibles increase an insurer’s “probable maximum loss” or PML, requiring additional reserves or reinsurance that may not be fully financed by the additional premium, requiring the insurer to reduce or limit the policies it writes in order

to reduce its PML. Insurers will also be subject to the administrative costs of developing forms and rates for offering additional deductibles.

Various provisions, such as repealing arbitration of rate filings, authorizing the Public Counsel to intervene in rate cases, and providing for public notice and public hearings on rate filings may make it more difficult for an insurer to have a rate increase approved or otherwise provide a greater disincentive to an insurer to challenge OIR's determination or to file for rate increases. This may result in lower rates, but may also discourage insurers from writing policies and reduce availability of coverage. Residential insurance policyholders would be provided the benefit of being notified of specified rate increases, being allowed to review rate filings, and demanding a public rate hearing in specified cases.

Insurers will have to absorb administrative costs associated with various requirements of the bill involving notices to insureds when rates are increased in specified cases; APA hearings on disputed rate filings; paying initial living expenses within 48 hours of the filing of a hurricane claim; and costs associated with public hearings pertaining to intervention by advocacy groups and the Public Counsel.

Insurers would be subject to increased claims costs for wind-driven water, which the bill requires to be covered. Depending on its interpretation, this may require not only coverage for wind-driven *rain* but, also flood losses from storm surge, which could significantly increase loss payments, particularly for Citizens Property Insurance Corporation.

Insurers would be prohibited from non-renewing policies due to only one claim, and would be subject to OIR approval of underwriting requirements, which must be "reasonable." These provisions would benefit policyholders by limiting the circumstances under which policies could be non-renewed, or for which coverage could be refused, but could also discourage insurers from writing policies.

C. Government Sector Impact:

The Department of Community Affairs would be appropriated \$50 million (on a non-recurring basis) from the General Revenue fund to establish a low-interest loan program for hurricane loss mitigation. The department could receive up to \$250,000 to administer the program.

According to the OIR, the agency can not determine the fiscal impact of this legislation to the office. If the number of public hearings, DOAH hearings, associated legal preparation or consultation costs increase, the OIR may require additional attorney and administrative resources.

The office also stated that under this legislation, the Public Counsel is authorized to intervene in matters related to OIR rules governing residential insurance property rules or in matters related to a residential property rate filing for a change in excess of 10 percent or more compared to rates in effect for the previous 12 months. In OPPAGA Report # 04-09, "*Office of Public Counsel Involvement in Medical Malpractice Rate Review Process May Help Limit Rate Increases*," OPPAGA published cost estimates for Public Counsel

intervention in medical malpractice rate change proceedings. OPPAGA estimated the cost for 10 rate reviews to be: \$100,000; one DOAH hearing to cost: \$200,000; and one Sr. Attorney to cost: \$ 76,000.

For 2004, the OIR has indicated the number of residential property rate change requests in excess of 10 percent of the previous 12 month period it has received. For Personal Lines Residential Insurance -- Homeowner/Mobile Homeowner/Dwelling, the OIR received 31 filings;¹³ and for Commercial Lines Residential Insurance, the OIR received 93 filings.¹⁴

Applying the OPPAGA estimates to the rate filing requests for residential property insurance, OIR estimates the following:

Rate Reviews Cost: 124/10=12 @ \$100,000:	\$1.2 million
5 Sr. Attorney Staff: 5 @ \$ 76,000:	\$380,000
DOAH Hearings: 5@ \$200,000:	\$1.0 million
 TOTAL Estimated Cost to OIR:	 \$2.58 million

In summary, OIR states that this legislation would require additional attorney and actuarial staff to duplicate OIR’s own attorney and actuarial expertise for certain rate filings and virtually all examinations and market investigations conducted by the office. The potential expense of duplicative regulation is estimated above – a significant increase in regulatory costs that will be passed through by insurers in the form of increased premium cost to Florida’s policyholders.

VI. Technical Deficiencies:

Section 17 of the bill requires insurers to offer certain deductibles in policies issued on or after March 1, 2005, but that date has already past. A time period of at least 4 to 6 months would be needed to implement this provision , in order for insurers to revise policy forms and rates, file them for approval, and provide the required 45-days’ notice to policyholders.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

¹³ These numbers reflect the number of filings that were received by the OIR with a proposed rate increase of greater than +10 percent and do not necessarily reflect that OIR approved these rate increases.

¹⁴ This includes all types of commercial filings including those filings that are Commercial Residential. At present the office does track separately only the commercial residential filings. The recent hurricane activity has significantly affected the market. The impact could result in more rate activity than historical results suggest. As such, the fiscal impact could be significantly understated.

VIII. Summary of Amendments:

Barcode 501412 by Banking and Insurance:

The bill requires that for personal lines residential policies issued on or after March 1, 2005, insurers must offer certain deductible amounts. The bill changes the date to policies issued on or after to January 1, 2006.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
