Committee on Banking and Insurance

CS/CS/HB 99 — Commercial Insurance Rates

by Economic Affairs Committee; Insurance and Banking Subcommittee; Rep. Drake and others (CS/CS/SB 178 by Banking and Insurance Committee, Commerce and Tourism Committee and Senator Oelrich)

The bill amends the insurance "Rating Law," to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S. The bill adds the following types of insurance to be exempt:

- General liability insurance;
- Nonresidential property insurance, except collateral protection insurance;
- Nonresidential multiperil insurance;
- Excess property insurance; and
- Burglary and theft insurance.

The bill further specifies that the current statutory exemption for directors and officers, employment practices and management liability coverage is also to include fiduciary liability coverage.

The bill expands the commercial motor vehicle insurance coverage that is exempt from specified rate filing and review requirements. Currently, commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings. The bill expands this exemption to apply to all commercial motor vehicle insurance, regardless of the size of the fleet being covered.

An insurer or rating organization that implements a rate change under any of these exemptions must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill requires that actuarial data with regard to the rates must be maintained by the insurer or rating organization for two years, instead of the current statutory requirement that an insurer must keep underwriting files, premiums, losses, and expense statistics, and a rating organization must keep loss and exposure statistics applicable to loss costs. The bill deletes current law which allows the OIR to require information to be submitted at the insurer's or rating organization's expense, but the bill replaces that provision with the requirement that the insurer or rating organization must incur the cost of any examination required by the OIR. The bill also removes the current statutory requirement that for insurers, the 30-day notice must include the total premium written on the product during the immediately preceding year.

If approved by the Governor, these provisions take effect October 1, 2011.
Vote: Senate 34-1; House 116-0

HB 331 — Firesafety

by Rep. Weinstein and others (SB 534 by Senator Wise)

The bill substantially amends the following sections of the Florida Statutes: 633.01, 633.021, 633.081, 1013.12, 1013.371, and 1013.38.

Additional Clarification of Duties of the State Fire Marshal

The bill requires the State Fire Marshal to consult with the Department of Education regarding the adoption of rules pertaining to safety and health standards at educational facilities. In the event that a county does not employ or appoint a certified firesafety inspector, the bill provides that the State Fire Marshal shall take the place of the local county, municipality, or independent special fire control district regarding firesafety inspections of educational property.

Elimination of Special Fire Safety Inspector

As of July 1, 2013, the classification of “special state firesafety inspector” is abolished. Special state firesafety inspectors may, however, be grandfathered in as full firesafety inspectors provided that the following conditions are met:

- The inspector has at least five years of experience as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- The inspector does not have five years of experience as a special state firesafety inspector but takes an additional 80 hours of courses and passes the examination; or
- The inspector has at least five years of experience, fails the examination, but takes 80 additional hours of courses, retakes, and passes the examination.

The bill redefines the term “firesafety inspector” as a person who is certified by the State Fire Marshal, pursuant to s. 633.081, F.S.

Streamlining of Process

The bill requires all administration and enforcement of uniform firesafety standards and the alternate evaluation system to be conducted by certified fire officials. Effective July 1, 2013, all firesafety inspectors are subject to the same certification process. The bill also reduces the number of mandatory annual inspections from two to one and the report generated remains at the local level.

The bill deletes the requirement for the State Fire Marshal to compile each local report into one document for submission to the Legislature, the Governor, the Commissioner of Education, the State Board of Education, and the Board of Governors.

School District Fire Safety Inspections (Including Charter and Postsecondary Schools)

The bill establishes parity for firesafety inspections for district schools, other public secondary schools (charter schools), and postsecondary institutions.

Inspection of Property by District School Boards

Boards18 are responsible for appointing certified firesafety inspectors to conduct annual inspections on educational and ancillary plant property. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. The applicable board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within 10 business days after the inspection, unless immediate corrective action is required, due to life-threatening deficiencies. The entity conducting the fire safety inspection is required to certify to the State Fire Marshal that the annual inspection has occurred.

Inspection of Educational Property by Other Public Agencies

Annual firesafety inspections must be conducted on educational and ancillary plant property operated by a school board or public college. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. Immediate corrective action is required by the county, municipality, or independent special fire control district in conjunction with the appointed fire official where life-threatening deficiencies are noted.

Inspection of Charter Schools Not Located on Board-owned or Leased Property, or Otherwise Operated by a School Board

The bill creates a new subsection 5 in s. 1013.12, F.S., to require a firesafety inspection to be conducted each fiscal year on educational facilities not owned or leased by the board or a public college, in accordance with State Fire Marshal standards. The bill clarifies that the inspection report is to be submitted to the charter school sponsor. The inspector must include a corrective plan of action in the report, with prompt response for life-threatening deficiencies. If corrective action is not taken, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The bill also expressly extends the State Fire Marshal’s enforcement authority to charter school educational facilities and property.

Inspections of Public Postsecondary Education Facilities

The bill requires inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards, to comply with the Florida Fire Prevention Code, without exception via local amendment. Both an annual inspection by a certified inspector and a corrective plan of action are required by this bill. The public college must provide a copy of the report to the appropriate county, municipality, or independent special fire control district. Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board, public college board, or charter school does not take corrective action, the bill requires the inspecting authority to immediately report the deficiency to the State Fire Marshal.

Approval of New Construction/Site Plans

Each board must provide for a periodic inspection of proposed educational or ancillary plants to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the currently mandated State Requirements for Educational Facilities.
The bill requires local boards to submit for approval new facility site plans to the local county, municipality, or independent special fire control district, and outlines the process for compliance and informal appeal. Site plans must also be submitted for new facility additions that exceed 2,500 feet in size. The State Fire Marshal has final administrative authority to resolve disputes pertaining to the requirements or application of the Florida Fire Prevention Code.

If approved by the Governor, these provisions take effect July 1, 2011
Vote: Senate 37-0; House 118-0

Committee on Banking and Insurance

CS/CS/CS/SB 408 — Property and Casualty Insurance

by Rules Committee, Budget Subcommittee on General Government Appropriations, Banking and Insurance Committee and Senators Richter and Hays

CS/CS/CS for SB 408 makes numerous changes to laws related to property insurance, primarily residential property insurance.

Time Limits for Claims and Statute of Limitations

The bill places time limits for bringing a hurricane or sinkhole claim and also creates a statute of limitations for bringing a breach of contract property insurance action in court. A claim, supplemental claim, or reopened windstorm or hurricane claim must be given to the insurer within 3 years after the hurricane first makes landfall or the windstorm causes covered damage. An initial, supplemental or reopened sinkhole claim must be given to the insurer within 2 years after the policyholder knew or reasonably should have known about the sinkhole loss. The bill also enacts a 5 year statute of limitations for bringing an action for the breach of a property insurance contract that runs from the date of loss.

Florida Hurricane Catastrophe Fund

The bill requires the Florida Hurricane Catastrophe Fund (Cat Fund) to provide reimbursement for all incurred losses, including amounts paid as fees on behalf of the policyholder. However, the bill also specifies a number of losses that are excluded from payment.

Insurance Capital Build-Up Incentive Program

The bill authorizes the State Board of Administration (Board) and private market insurers to renegotiate the terms of a surplus note issued pursuant to the Insurance Capital Build-Up Incentive Program before January 1, 2011. If the insurer agrees to accelerate the payment period of the note by at least 5 years, the Board must agree to exempt the insurer from the premium-to-surplus ratios required by statute. If the insurer agrees to accelerate the payment period for less than 5 years, the Board may agree to an appropriate revision of the premium-to-surplus ratios after consulting with the Office of Insurance Regulation, subject to a minimum writing ratio of net premium to surplus of at least 1 to 1 or of gross premium to surplus of at least 3 to 1.

Surplus Requirements

The bill raises the surplus requirements for insurers transacting residential property insurance that are not a wholly owned subsidiary of an insurer domiciled in another state. For a new insurer, the bill raises the surplus requirement from $5 million to $15 million. An existing insurer that holds a certificate of authority before July 1, 2011, must have a surplus of at least $5 million until June 30, 2016; from July 1, 2016 until June 30, 2021, a surplus of at least $10 million; and on or after July 1, 2021, a surplus of at least $15 million.

Public Adjusters

The bill limits public adjuster fees related to reopened or supplemental claims to a maximum of 20 percent of the reopened or supplemental claim payment. The bill also limits public adjuster fees to 20 percent of an insurance claim payment made by the insurer more than one year after events that are the subject of a declaration of a state of emergency by the governor. A public adjuster fee related to a policy issued by Citizens Property Insurance Corporation may not exceed 10 percent of the additional amount actually paid in excess of the amount originally offered by Citizens on the claim.

Public adjusters are prohibited from making deceptive or misleading advertisements or solicitations. Written solicitations must include a disclaimer notifying the consumer that a solicitation is being made. A public adjuster contract related to a property and casualty insurance claim must contain the full name of the public adjuster and public adjusting firm, the business address, license number, and other specified information.

Public adjusters must give prompt notice of a property loss claim to the insurer and include with the notice the public adjuster's employment contract. The public adjuster must also ensure that the insurer has access to inspect the property, can interview the insured directly about the loss and claim, and allow the insurer to obtain information necessary to investigate and respond to the claim. The insurance company's adjuster or other persons acting on the insurer's behalf must provide at least 48 hours notice before scheduling an inspection of the property or a meeting with the claimant. The insurer also must allow the public adjuster to be present during the insurer's in-person meetings with the insured.

The bill requires licensed contractors to be licensed as a public adjuster in order to adjust a claim on behalf of the insured.

Rate Standards

The bill requires property insurance rate filings to be submitted via the "file and use" method until May 1, 2012. In a "file and use" rate filing the insurer must receive approval from the Office of Insurance Regulation before implementing the insurer's proposed rate.

Residential property insurers are authorized to make a separate rate filing limited solely to an adjustment of its rates for reinsurance and financing products used as a replacement for reinsurance. The rate filing may not result in a premium increase of more than 15 percent for an individual policyholder and must be approved or disapproved by the Office of Insurance Regulation within 45 days. The OIR retains the authority to deny the filing if the proposed rate is excessive, inadequate, or unfairly discriminatory. An insurer may make only one such filing per 12-month period. The procedure created by the bill expands a provision in current law that authorizes a 10 percent rate increase per policyholder that is solely based on reinsurance that replaces Temporary Increase in Coverage Limits reinsurance from the Florida Hurricane Catastrophe Fund.

The bill specifies that that the sworn certification of a property insurance rate filing is not rendered false if the insurer provides the Office of Insurance Regulation with additional information pursuant to a request from the Office. The insurer's actuary responsible for providing the additional information must provide an additional sworn certification.

Citizens Property Insurance Corporation

The bill renames the Citizens "high risk" account the "coastal" account.

Under current law, Citizens is authorized to offer policies that provide coverage only for the peril of wind for risks located within the coastal account. The high risk area of the coastal account consists of areas that were eligible for coverage in the Florida Windstorm Underwriting Association, essentially coastal areas at high risk for a hurricane. The bill repeals the requirement to reduce the high-risk area after December 1, 2010, if necessary to reduce the probable maximum loss attributable to wind-only coverages to 25 percent below the "benchmark" for the high-risk area, which is defined in statute as the 100-year probable maximum loss for the Florida Windstorm Underwritng Association based on its November 30, 2000 exposures. The bill also repeals a requirement to reduce the high-risk area after February 1, 2015, by 50 percent below the benchmark. The requirement that the Citizens board issue an annual report showing the reduction or increase in the 100-year probable maximum loss attributable to wind only coverages and the quote share program is also repealed.

The bill specifies that Citizens may not levy regular assessments until the full Citizens policyholder surcharge has been levied. The bill also specifies that the Citizens policyholder surcharge must be paid upon cancellation, termination, or renewal of an existing policy or upon issuance of every new policy issued within 12 months after the surcharge is levied or the time needed to fully collect the policyholder surcharge.

As of January 1, 2012, Citizens must require agents to obtain from applicants for coverage a signed Acknowledgment of Potential Surcharge and Assessment Liability form. The form details that Citizens policyholders are subject to a Citizens policyholder surcharge of up to 45 percent of premium and emergency assessments.

Citizens policies issued or renewed on or after January 1, 2012, which cover sinkhole loss may not include coverage for losses to appurtenant structures, sidewalks, decks, or patios that are caused by sinkhole activity. Citizens must exclude such coverage using a notice of coverage change, which may be included with the policy renewal.

Citizens Board of Governors must commission an independent third-party consultant with insurance company management expertise to prepare a report and make recommendations on the costs and benefits of outsourcing policy issuance and service functions to private servicing carriers. The report must be completed and submitted to the Citizens board by July 1, 2012. The board must subsequently develop a plan to implement the consultant's report and submit the plan to the Financial Services Commission for review, modification, and approval. Upon the commission's approval of the plan, the Citizens board must begin implementing the plan by January 1, 2013.

Members of the Citizens Board of Governors with insurance experience are deemed to be within the exception in s. 112.313(7)(b), F.S., that allows a public officer to practice a particular profession or occupation when required or permitted by law or ordinance. The bill also provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must publicly state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

Notice of Cancellation

The bill revises the notice of cancellation, nonrenewal or termination requirements for personal lines and commercial lines residential property insurance policies. At least 120 days notice must be given to a named insured whose residential structure has been insured by the insurer or its affiliate for at least 5-years. Under current law 180 days notice must be provided for the cancellation, nonrenewal, or termination of such policies. The bill authorizes the nonrenewal of a policy that covers both a home and a motor vehicle for any reason applicable to either the property or motor vehicle insurance, so long as the insurer provides 90 days notice of the nonrenewal. The notice of cancellation requirement for a Citizens policy that has been assumed by an authorized "take out" insurer is reduced to 45 days.

The bill also authorizes an insurer to cancel or nonrenew a property insurance policy if the Office of Insurance Regulation finds that the early cancellation is necessary to protect the best interests of the public or policyholders. The Office may base its finding upon the financial condition of the insurer, the insurer's lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The nonrenewal may be conditioned upon the insurer being placed under administrative supervision or to the appointment of a receiver.

Notice of Change in Policy Terms

The bill authorizes insurers to renew a property and casualty insurance policy under different policy terms by providing to the policyholder a written "Notice of Change in Policy Terms" instead of a written "Notice of Non-Renewal." The Notice must be titled "Notice of Change in Policy Terms," give the insured written notice of the change, and be enclosed with the written notice of renewal premium. The insured is deemed to have accepted the change in policy terms upon the insurer's receipt of the premium payment for the renewal policy. If the insurer fails to provide the Notice of Change in Policy Terms the original policy terms remain in effect.

Replacement Cost Coverage

The bill modifies how insurers must pay dwelling or personal property losses on a replacement cost basis. For a dwelling loss, the insurer must initially pay the actual cash value, minus the deductible. Subsequently the insurer must pay any amounts necessary to perform repairs as work is performed. If a total loss of a dwelling occurs, the insurer must pay the entire replacement cost coverage without holdback of depreciation in value pursuant to the Valued Policy Law.

For personal property losses insured on a replacement cost basis, the insurer must offer two claim payment options. The first option requires the insurer to pay the replacement cost without holdback of depreciation, regardless of whether the insured replaces the property. The second option allows the insurer to limit the initial payment to the actual cash value of the personal property to be replaced. To receive payment from the insurer for the full replacement value of the personal property, the insured must provide a receipt for the replaced property to the insurer. A policy authorizing the insurer to require replacement of personal property prior to paying the full replacement cost must provide the policyholder with a premium credit or discount and the insurer must provide clear notice of the payment process before the policy is bound.

Sinkhole and Catastrophic Ground Cover Collapse Insurance

The bill enacts numerous revisions and clarifications to ss. 627.706-627.7074, F.S., governing sinkhole and catastrophic ground cover collapse insurance. The bill authorizes insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. The bill also allows an insurer to require a property inspection prior to issuing sinkhole loss coverage. The bill clarifies that additional living expense coverage is only available pursuant to a sinkhole loss if there is structural damage to the covered building.

The bill changes the definition of “sinkhole loss,” primarily by creating a statutory definition of “structural damage.” A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. The bill creates a detailed definition of “structural damage” for purposes of determining whether a sinkhole loss has occurred. The definition specifies five distinct types of damage that constitute structural damage. Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity.

***Investigation of Sinkhole Claims* –** The bill creates a substantially new process for an insurer’s investigation of a sinkhole claim. The process requires the insurer to determine whether: (1) the building has incurred structural damage that (2) has been caused by sinkhole activity. Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The new process is as follows:

- *Initial Inspection & Structural Damage Determination*: Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder’s premises to determine if there has been structural damage which may be the result of sinkhole activity. This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.

- *Sinkhole Testing Initiated by the Insurer*: The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss. If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.

- *Notice to the Policyholder*: The bill maintains the requirement that the insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made) and a statement of the circumstances under which the insurer must conduct sinkhole testing. The policyholder must also be notified of his or her right to demand sinkhole testing and the circumstances under which the policyholder may incur costs associated with testing.

- *Authorization to Deny Sinkhole Claim*: Insurers may continue to deny the claim upon a determination that there is no sinkhole loss.

- *Policyholder Demand for Sinkhole Testing*: The bill specifies that the policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed (i.e. the claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss). However, if the policyholder requests such testing, it must pay the insurer 50 percent of the sinkhole testing costs up to $2,500. If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.

***Payment of Sinkhole Claims* –** The insurer continues to be required to pay to stabilize the land and building and repair the foundation upon the verification of a sinkhole loss. Payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. The bill also clarifies that the insurer is required to give notice to the policyholder regarding payment of the claim.

The bill revises the statutory authorization specifying that the insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs. The bill requires the contract for below-ground repairs to be made in accordance with the recommendations set forth in the insurer’s sinkhole report issued pursuant to s. 627.7073, F.S., and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation.

The bill specifies that if a covered building suffers a sinkhole loss or catastrophic ground cover collapse, the insured must repair such damage in accordance with the insurer's professional engineer's recommended repairs. However, if repairs cannot be completed within policy limits, the insurer has the option to either pay to complete the recommended repairs or tender policy limits.

***Prohibition Against Rebates* –** The policyholder is prohibited from accepting a rebate from a person performing sinkhole repairs. If the policyholder does receive a rebate, coverage under the insurance policy is rendered void and the policyholder must refund the amount of the rebate to the insurer. Furthermore, a person who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, F.S. (up to 5 years imprisonment), s. 775.083, F.S. (up to a $5,000 fine), and s. 775.084, F.S. (for a habitual felony offender up to 10 years imprisonment with no eligibility for release for 5 years).

***Nonrenewal of Policy Due to Sinkhole Claims* –** The circumstances that allow an insurer to nonrenew a policy on the basis of filing a sinkhole claim are modified. The policy may only be nonrenewed if the insurer makes payments for sinkhole loss that equal or exceed policy limits for damage to the covered building or the policyholder does not repair the structure in accordance with the engineering recommendations.

***Sinkhole Testing Reports* –** The bill requires a sinkhole testing report to verify whether the structural damage to the covered building has been identified within a reasonable professional probability.

***Filing of Reports With The Clerk of Courts* –** In addition to filing the sinkhole testing report with the Clerk of Court after paying a sinkhole loss claim, the bill requires the insurer to also file the neutral evaluator's report (if any), a copy of the certification indicating that stabilization has been completed (if applicable), and the amount of the claim payment. The policyholder must file a copy of any sinkhole report prepared on behalf of the policyholder as a precondition to accepting a sinkhole loss payment.

***Certification of Proper Completion of Sinkhole Repairs* –** Once building stabilization or foundation repairs of a sinkhole loss are completed, the professional engineer responsible for monitoring the repairs must issue a report to the property owner detailing the repairs performed and certifying that the repairs were performed properly. The professional engineer must file with the Clerk of Court a copy of the report and certification, the legal description of the real property, and the name of the county clerk of court.

***Neutral Evaluation of Disputed Sinkhole Claims* –** The bill specifies that neutral evaluation must determine causation (whether a sinkhole loss has occurred and, if so, whether the observed damage was caused by sinkhole activity); all methods of stabilization and repair both above and below ground; the costs for stabilization and all repairs; and all information needed to determine whether a sinkhole loss has been verified and render an opinion on all matters at dispute in the neutral evaluation.

The neutral evaluator must be provided with information necessary to perform his or her duties. The bill requires that the neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated or for which a claim has been made. The policyholder must provide the neutral evaluator with all reports initiated on behalf of the policyholder that confirm a sinkhole loss or dispute the insurer's sinkhole testing report. Such materials must be provided prior to the neutral evaluator's physical inspection of the property.

The bill revises the procedures and time frames for conducting the neutral evaluation. The parties are provided 14 business days to agree to a neutral evaluator. If an agreement cannot be reached, the Department of Financial Services (DFS) shall appoint a certified neutral evaluator. Each party may disqualify two neutral evaluators without cause; a reduction from 3 disqualifications under current law. The neutral evaluator has 14 business days after the referral to notify the parties of the date, time and place of the neutral evaluation conference; an increase from 5 business days in current law. The neutral evaluator must make a reasonable effort to hold the conference within 90 days after the DFS has received the request for neutral evaluation. Failure to conduct the conference within 90 days does not invalidate either party's right to neutral evaluation. Current law requires that the neutral evaluation conference be held within 45 days. The neutral evaluator's report must be provided to the parties within 14 days after the completion of the neutral evaluation conference. A court proceeding related to the neutral evaluation must be stayed until 5 days after the filing of the neutral evaluator's report with the court.

If the neutral evaluator is not qualified to determine a disputed issue, he or she may enlist the assistance of another certified neutral evaluator, a professional engineer or professional geologist who is not a certified neutral evaluator, or a licensed general contractor to provide an opinion on that issue. Such person may be disqualified for cause in the same fashion as a neutral evaluator. The neutral evaluator may also request that the entity that performed the sinkhole investigation perform additional and reasonable testing that the neutral evaluator deems necessary.

If the insurer agrees to comply with the neutral evaluator's report, payments shall be made in accordance with the terms of the applicable insurance policy and s. 627.707(5), F.S.

The bill also makes the following changes related to the neutral evaluation process:

- Specifies that neutral evaluation does not invalidate an insurance policy's appraisal clause.
- Allows the parties to disqualify a neutral evaluator for cause based on specified familial or professional relationships.

- Requires admission of the neutral evaluator's oral testimony and full report in any action, litigation or proceeding related to the claim.
- Specifies that the actions of the insurer in neutral evaluation are not a confession of judgment or an admission of liability.
- Deems neutral evaluators agents of the Department of Financial Services and grants them immunity from suit pursuant to s. 44.107, F.S.

Legislative Intent **–** The bill states that the clarifications and revisions to ss. 627.706-627.7074, F.S., are intended to reduce the number and cost of sinkhole claims and disputes, increase reliance on scientific or technical determinations relating to sinkhole claims, and ensure that repairs are made in accordance with scientific and technical determinations and insurance claims payments.

Other Provisions

The bill:

- Repeals the consumer advocate report card for property insurers.
- Repeals an obsolete requirement that the Office of Insurance Regulation develop a standard rating territory plan for residential property insurance by January 15, 2006.
- Authorizes the public hurricane loss projection model to charge a private market insurer fees for use of the model related to the reasonable costs associated with the operation and maintenance of the model.
- Repeals a requirement that the Office of Insurance Regulation develop a method to directly correlate property insurance hurricane mitigation discounts and credits with the Uniform Home Grading Scale.
- Clarifies that the requirement that an insurer must pay property insurance claim within 90 days of receiving notice of the claim applies to reopened and supplemental claims.
- Clarifies that inquiries about coverage on a property insurance contract are not claim activity unless a claim is filed by the policyholder which results in an insurer investigation of the claim.
- Repeals the electronic database of sinkhole activity.
- Specifies that the insurer may request at its own expense the verification a uniform hurricane mitigation verification provided to the insurer by the policyholder or policyholder's agent in addition to forms provided by an authorized mitigation inspector.
- Provides that all provisions of the act are severable from any provision that is held invalid.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 26-11; House 85-33

Committee on Banking and Insurance

HB 469 — Individual Retirement Accounts

by Rep. Stargel (SB 978 by Senator Flores and Diaz de la Portilla)

The bill amends s. 222.21(2)(c), F.S., to provide that an Individual Retirement Account (IRA) exempt from creditors under s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an Inherited IRA.

The bill contains "whereas" clauses to express the Legislature's intent that an Inherited IRA, as defined in the Internal Revenue Code of 1986, was intended to be exempt from the claims of creditors and that the decisions in *Robertson v. Deeb* and *In re: Ard* are contrary to the Legislature's intent in 2005.

The bill amends s. 222.21(2)(c), F.S., to provide that an IRA exempt from creditors under s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an Inherited IRA. Under the proposed changes, when an owner of an IRA passes away, his or her named beneficiary would continue to enjoy the protection from creditors that the original owner enjoyed under s. 222.21(2)(a), F.S. This protection would most likely extend to protection in bankruptcy proceedings, as well.

The bill contains language indicating the provisions are clarifying and shall apply retroactively to all Inherited IRA's regardless of when an Inherited IRA was created.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

Committee on Banking and Insurance

CS/HB 677 — Public Records/Office of Financial Regulation

by Government Operations Subcommittee and Rep. Pilon (CS/SB 1328 by Committee on Criminal Justice and Senator Hays)

This bill makes information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law and information that is received or developed by the Office of Financial Regulation (OFR) as part of a joint or multiagency investigation or examination confidential and exempt from s. 119.07(1), F.S., and s. 24(1), Art. I of the State Constitution.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation of financial institutions. The bill provides for retroactive application of the exemption.

In accordance with the Open Government Sunset Review Act, the exemption will be repealed on October 2, 2016, unless reviewed and saved from repeal by the Legislature, and a statement of public necessity, as required by the State Constitution, is provided.

These provisions become law on July 1, 2011.
Vote: Senate 39-0; House 118-0

CS/HB 723 — Reciprocity of Workers' Compensation Claims

by Insurance and Banking Subcommittee; and Rep. Weinstein and others (CS/CS/SB 1286 by Budget Committee; Banking and Insurance Committee; and Senator Bennett)

In Florida, the workers' compensation process is governed by ch. 440, F.S., which provides a detailed framework for coverage and benefit issues, as well as the process for resolving disputes. These provisions are specific to Florida and may be substantially different than those in other states. Section 440.09(1)(d), F.S., provides that if a Florida employee is injured while employed outside of Florida, and the injury would entitle the employee or dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation. If, however, the employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in ch. 440, F.S.

Recently, however, a number of Florida employees, most notably former professional athletes, have begun to file for benefits under the workers' compensation laws of other states, particularly California. The claims are based on the premise that, although the employer and primary employment is in Florida, the injury was sustained in the other state.

The bill creates a process for reciprocity designed to ensure that if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state. To accomplish this purpose, the bill creates s. 440.094, F.S., to provide the following.

- If a Florida employee temporarily leaves the state incidental to his or her employment and is injured in the course of employment, that employee, or beneficiaries if the injury results in death, is entitled to the benefits as if the employee were injured in Florida.
- If an employee from another state is injured incidental to employment while temporarily in Florida, that employee and his or her employer are exempt from Florida law if: (1) the employer has workers' compensation insurance coverage under its own state laws; (2) the extraterritorial provisions of Florida law are recognized in the employer's state and; (3) employers and employees covered in Florida are exempted from the workers' compensation laws of the other state.
- If an employee from another state is injured incidental to employment while temporarily in Florida, the exclusive remedy against the employer are the workers' compensation laws of the other state.
- A certificate from the appropriate office of another state is prima facie evidence that an employer carries workers' compensation coverage in the other state.
- For any litigation in Florida that involves a question of construction of laws in another state, the Florida court shall take judicial notice of the laws of the other state.
- When an employee has a claim under workers' compensation in another jurisdiction for the same injury or occupational disease as a claim filed in Florida, the total amount of

compensation derived from the other jurisdiction shall be credited against the compensation due under Florida Workers' Compensation Law.
- An employee is considered to be temporarily working in another state if the duration of that work does not exceed 10 consecutive days or 25 days during a calendar year.
- The provisions of s. 440.094, F.S., apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 39-0; House 117-0

Committee on Banking and Insurance

CS/HB 1007 — Insurer Insolvency

by Insurance and Banking Subcommittee; Reps Bernard; Julien; Cruz and others (CS/CS/SB 1568 by Budget Committee; Banking and Insurance Committee and Senator Montford)

The bill contains numerous provisions.

Relating to the State Board of Administration

- The bill allows an insurer to request that the State Board of Administration renegotiate the terms of a surplus note issued before January 1, 2011 under the Insurance Capital Build-Up Incentive Program.
- The bill increases the surplus requirements from $100 million to $250 million for foreign insurers in order to receive credit for reinsurance ceded to these foreign insurers.
- The bill expands the list of nationally recognized statistical rating organizations that may be utilized to provide a secure financial rating.

Relating to Title Insurers

- The bill requires that after an order of rehabilitation has been entered, the receiver shall review the condition of the title insurer and file a plan of rehabilitation for approval with the court.
- The bill requires that policies on real property in this state issued by the title insurer in rehabilitation shall remain in force unless the receiver determines the assessment capacity provided by this section is insufficient to pay claims in the ordinary course of business.
- The bill allows policies on real property located outside the this state may be canceled as of a date provided by the receiver and approved by the court, if the state in which the property is located does not have statutory provisions to pay future losses on those policies.
- The bill requires the establishment of a claims filing deadline for policies on real property located outside this state that have been canceled.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims when policies have been canceled, with any unused funds being returned to the general assets of the estate.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- The bill requires that funds allocated to pay claims on policies located outside of this state shall be based on the pro rata share of premiums written in each state over each of the 5 calendar years preceding the date of an order of rehabilitation.
- The bill requires each title insurer shall be liable for an assessment to pay all unpaid title insurance claims and expenses of administering and settling those claims on real property in this state for any title insurer that is ordered into rehabilitation.
- The bill states that the Office of Insurance Regulation (office) shall order an assessment if requested by the receiver on an annual basis in an amount that the receiver deems

sufficient for the payment of known claims, loss adjustment expenses, and the cost of administration of the rehabilitation expenses. The receiver shall consider the remaining assets of the insurer in receivership when making its request to the office. Annual assessments may be made until no more policies of the title insurer in rehabilitation are in force or the potential future liability has been satisfied. The office may exempt or limit the assessment of a title insurer if such assessment would result in a reduction to surplus as to policyholders below the minimum required to maintain the insurer's certificate of authority in any state.

- The bill requires that the assessments shall be based on the total of the direct title insurance premiums written in this state as reported to the office for the most recent calendar year. Each title insurer doing business in this state shall be assessed on a pro rata share basis of the total direct title insurance premiums written in this state.
- The bill requires that assessments be paid to the receiver within 90 days after notice of the assessment or pursuant to a quarterly installment plan approved by the receiver. Any insurer that elects to pay an assessment on an installment plan shall also pay a financing charge to be determined by the receiver.
- The bill requires that the office shall order an emergency assessment if requested by the receiver. The total of any emergency assessment, when added to any annual assessment in a single calendar year, may not exceed 3 percent of an insurer’s surplus to policyholders as of the end of the previous calendar year or more than 10 percent of its surplus to policyholders over any consecutive 5-year period. The 10 percent limitation shall be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years.
- The bill allows the receiver to use the proceeds of an assessment to acquire reinsurance or otherwise provide for the assumption of policy obligations by another insurer.
- The bill requires that the receiver shall make available information regarding unpaid claims on a quarterly basis.
- The bill requires a title insurer in rehabilitation may not be released from rehabilitation until all of the assessed insurers have recovered the amount assessed either through surcharges collected or payments from the insurer in rehabilitation.
- The bill prohibits a title insurer in rehabilitation, for which an assessment has been ordered, from issuing any new policies until the insurer has been released from rehabilitation and has received approval from the office to resume issuing policies.
- The bill prohibits officers, directors, and shareholders of a title insurer ordered into rehabilitation or liquidation from serving as an officer, director, or shareholder of another insurer authorized in this state unless the officer, director, or shareholder demonstrates to the office for a 2-year period immediately preceding the receivership that: his or her personal actions or omissions were not a significant contributing cause to the receivership; he or she did not willfully violate any order of the office; he or she did not receive directly or indirectly any distribution of funds from the insurer in excess of amounts authorized in writing by the office; the financial statements filed with the office were true and correct statements of the title insurer's financial contrition; he or she did not engage in any business practices which were hazardous to the policyholders, creditors, or the public; and he or she at all times acted in the best interests of the title insurer.

- The bill requires upon the making of any assessment, the office shall order a surcharge on each title insurance policy issued thereafter, which insures an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed $25 per transaction for each impaired title insurer. If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.
- The bill states the party responsible for payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance issued at the simultaneous issue rate. For all other purposes, the surcharge will be considered a governmental assessment to be separately stated on any settlement statement. The surcharge is not subject to premium tax or reserve requirements.
- The bill requires that a title insurer doing business in this state which wrote no premiums in the prior calendar year shall collect the same per transaction surcharge. Such surcharge collected shall be paid to the receiver within 60 days after receipt from the title agent or agency.
- The bill states that each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance policy written and remit those surcharges along with the policies and premiums within 60 days to the title insurer on whom the policy was written.
- The bill prohibits a title insurer from retaining more in surcharges for an ordered assessment than the amount of assessment that title insurer paid.
- The bill requires each title insurer collecting surcharges to promptly notify the office when it has collected surcharges equal to the amount of the assessments paid. The office shall notify all companies, including those collecting surcharges to cease collecting surcharges when notified that all assessments have been recovered.
- The bill requires that when filing each quarterly financial statement, a title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period. Any surcharges collected in excess of the amount assessed shall be paid to the Insurance Regulatory Trust Fund.

Relating to the Department of Financial Services

- The bill allows the Department of Financial Services to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- The bill provides for the State Risk Management Trust Fund to cover employees, officers, and agents at the department for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by the department while acting as a receiver.
- The bill requires the Insurance Regulation Trust Fund to cover all unreimbursed costs when opening ancillary delinquency proceedings for the purposes of obtaining records.

- The bill further clarifies the department's power to obtain records from third-party administrators.

Relating to Florida's Insurance Guaranty Associations

- The bill makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.
- The bill amends qualifications of FIGA and FWCIGA board members representing, or employed by, an insurer in receivership.
- The bill clarifies FIGA's obligation to pay valid claims after an independent review of policies and claims has been presented to it.

This bill substantially amends the following sections of the Florida Statutes: 215.5595, 624.610, 631.152, 631.2715, 631.391, 631.400, 631.401, 631.54, 631.56, 631.717, 631.904, and 631.912.

The bill creates section 631.2715, Florida Statutes.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 34-0; House 115-0

CS/HB 1087 — Insurance

by Economic Affairs Committee; and Rep. Holder (CS/CS/SB 1252 by Rules Committee; Budget Committee; and Senator Smith)

In Florida, the Office of Insurance Regulation (OIR) regulates insurers and other risk-bearing entities. The Department of Financial Services (DFS) has regulatory authority over many insurance-related activities, including, but not limited to, insurance agents and agencies, investigation of insurance fraud, and the administration of the Workers' Compensation Law. The bill provides the following changes to these insurance-related activities:

Notification of the Cancellation, Nonrenewal, or Renewal of a Policy

The bill revises the policyholder notification requirements for an insurer in transactions involving the nonrenewal, renewal, or cancellation of workers compensation, employer liability, commercial liability, motor vehicle, or other property and casualty insurance coverage. The bill changes the designated person or persons an insurer is required to notify from the "named insured" to the "first-named insured" in transactions involving the nonrenewal, renewal, or cancellation of such.

Workers' Compensation Insurance

The bill allows for the use of a prepaid card for the provision of workers' compensation benefits to an injured employee if certain conditions are met. Currently, such benefits are payable by check or by direct deposit into the employee's account. The bill permits flexibility for insurers regarding the frequency of premium audits by providing that such audits are not required for coverage, except as provided by the insurance policy, by an order of the OIR, or at least once each policy period at the request of the insured. The bill provides that assessments for the Special Disability Trust Fund are determined on a calendar year basis rather than a fiscal year basis.

Certificate of Authority Requirements for Insurers

The bill allows insurers domiciled outside of the U.S., that cover only persons who are nonresidents of the U.S., to be exempt from the certificate of authority provisions if certain conditions are met. Currently, life insurers are provided an exemption if certain conditions are met.

Licensure of Agents and Agencies

The bill revises the requirements for disqualification of applicants convicted of certain crimes from agent and adjuster licensure by the DFS. The bill bars persons who commit specified felonies from applying for licensure and revises license waiting periods for other persons.

Motor Vehicle Insurance

The bill creates a civil penalty for motor vehicle insurance fraud authorizing civil fines of up to $5,000 for the first offense, $10,000 for the second offense, and $15,000 for third and subsequent offenses.

Service Warranty Associations

The bill exempts a service warranty company from licensure requirements if the service warranties are only offered, marketed, or sold to nonresidents of Florida, and meets other requirements.

Surplus Lines Insurance

The bill allows surplus lines insurance agents to place commercial insurance directly in the surplus lines market without requiring the agent to make a diligent effort to procure such coverage from an authorized insurer. The bill also requires the insured to sign a disclosure regarding surplus lines coverage.

Except if otherwise expressly provided in this act and except for section 20, which takes effect upon this act becoming a law, this act takes effect July 1, 2011.
Vote: Senate 38-0; House 111-4

CS/HB 1121 — Financial Institutions

by Insurance and Banking Subcommittee and Rep. Ingram (CS/SB 1332 by Banking and Insurance Committee and Senator Richter)

The bill permits the Office of Financial Regulation to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares. The bill permits the Office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the Office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the Office.

The bill creates s. 658.4185(3), F.S., to expand the prior approval privilege of charters from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the $7,500 filing fee.

The bill creates s. 655.03855, F.S., which allows the Office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board. Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to operate the financial institution in a safe and sound manner. Nevertheless, prior to the placement of a provisional director, the Office must allow the financial institution 30 days to acquire the minimum amount of directors.

The bill eliminates the required examination of state financial institutions by the Office every 36 months. The bill requires that the Office perform examinations every 18 months, but the Office may accept examinations conducted by the appropriate federal regulatory agency. The bill moves the definition of "related interest" to s. 655.005,.F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability.

The bill makes the following conforming changes to comply with the Wall Street Reform Act:

The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution. The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a cease and desist order. To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk. To conform, the bill adds the evaluation exposure to risk in derivative transactions.

The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

The bill makes other technical conforming changes.

These provisions become law on July 1, 2011.
Vote: Senate 39-0; House 114-0

CS/HB 1125 — Health and Human Services

by Health and Human Services Quality Subcommittee; and Rep. Corcoran (CS/SB 1922 by Banking and Insurance Committee; and Senator Garcia)

In 2008, the Florida Legislature created the Florida Health Choices Program (program). The program is designed to provide a centralized marketplace for the sale and purchase of health care products. These products would include, but are not limited to, health insurance plans, health maintenance organizations (HMOs) plans, prepaid services, service contracts, and flexible spending accounts. The bill makes the following changes to the program:

- Expands the products, vendors, employers, and individuals that may participate in the program;
- Streamlines and clarifies the process by which new products are approved and offered; and
- Requires the Office of Insurance Regulation (OIR) to approve risk-bearing products offered by the program.

The bill also contains the following provisions:

- Exempts specified Medicaid psychiatric facilities and Level III neonatal intensive care units from the certificate-of-need provisions if certain conditions are met;
- Revises the eligibility requirements for health flex plans by eliminating the requirement that an enrollee must be 64 years of age or younger; and
- Adds licensed orthotists and prosthetists to the current definition of “health care provider,” under s. 766.202, F.S., for purposes of medical malpractice actions pursuant to ch. 766, F.S.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 35-4; House 117-0

CS/HB 1193 — Health Insurance

by Health and Human Services Quality Subcommittee; and Rep. Hudson and others (CS/SB 1754 by Banking and Insurance Committee; and Senator Garcia)

The bill provides that a person may not be compelled to purchase health insurance, except as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- An activity between private persons.

The bill also provides that this would not prohibit the collection of debts lawfully incurred for health insurance.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 30-7; House 81-34

CS/CS/CS/SB 1816 — Surplus Lines Insurance

by Budget Committee, Budget Subcommittee on Finance and Tax, Banking and Insurance Committee and Senators Fasano and Richter (CS/CS HB1227 by Finance and Tax Committee, Insurance and Banking Subcommittee and Rep. Hager)

Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase needed coverage from admitted insurers. The premiums charged for surplus line coverages are subject to a 5 percent tax on premiums and a service fee of up to 0.3 percent. The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was included within the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRAA (ss. 15 USC-8201-8206) limits regulatory authority over nonadmitted (surplus lines insurance to the home state of the insured (policyholder). Under the NRRA, Florida will no longer have jurisdiction to collect taxes and fees on surplus lines policies that cover risks over Florida and other states unless Florida is the home state of the insured, potentially resulting in significant loss of tax revenue. However, the NRRA authorizes states to enter into agreements with one another for home states to collect taxes on multi-state risks and then allocate tax revenue to the state where the insured risks are located.

Senate Bill 1816 applies the surplus lines tax to the entire premium of a surplus lines policy covering risks over multiple states when Florida is the home state of the insured as defined in the NRAA. The bill also authorizes the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted surplus lines insurance taxes for multi-state risks pursuant to the NRRA. The bill authorizes the creation of a clearinghouse to receive the surplus lines premium tax collected by the home state of the insured and disburse the appropriate tax amount to the states where the risks are located. The clearinghouse is also authorized to collect a service fee of 0.3 percent of the gross premium. The tax rate collected on a multi-state surplus lines policy is limited to the tax rate where the insured risk is located. The Legislature is authorized to review any such agreement and may instruct the Chief Financial Officer to withdraw from an agreement if it determines that the agreement is not in the best interest of the state. The DFS must issue a report to the President of the Senate and Speaker of the House of Representatives about the terms and conditions of the agreement.

The bill also creates requirements governing the reporting and payment of surplus lines premium tax revenue and fees for policies covering multi-state risks. Surplus lines agents and insureds that do not use a surplus lines agent to procure coverage, have 45 days after the end of the calendar quarter to file and affidavit describing transactions handled during the last quarter and pay the required premium tax and fees.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

HB 4081 — Repeal of Obsolete Insurance Provisions (Chapter 2011-11)

by Rep. Horner (SB 636 by Senator Simmons)

The bill (Chapter 2011-11, L.O.F.) repeals outdated or obsolete language relating to a refund to Citizens Property Insurance Corporation of funds not committed or reserved for insurers in the Insurance Capital Build-Up Incentive Program; requirements of pre-suit notice for suits brought against the Florida Automobile Joint Underwriting Association (FAJUA); form filings for compliance with the mandatory catastrophic ground cover collapse coverage; report on the development of a sinkhole database; feasibility study for Florida sinkhole coverage facility; and effective date of insurers' mandatory windstorm and contents coverage in property insurance policies.

The bill deletes s. 215.5595(11), F.S., which requires the State Board of Administration to refund to Citizens all uncommitted Insurance Capital Build-Up Incentive Program funds that were to have been transferred from Citizens to the Program in 2009 through SB 2860. The transfer of funds was never performed due to the Governor's veto of SB 2860; thus, the bill repeals this obsolete language from the statute.

The bill deletes s. 627.311(3)(k)2., F.S., which contains a 90 day pre-suit notice requirement for suits brought against FAJUA under s. 624.155, F.S. By its own terms, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. Because the Legislature did not reinstate s. 627.311(3)(k)2., F.S., prior to October 1, 2007, that subparagraph expired and is obsolete. Therefore, the bill deletes obsolete language from the statute.

The bill deletes s. 627.706(3), F.S., which requires insurers to file a form implementing the mandated coverage of catastrophic ground cover collapse and the optional sinkhole coverage with the Office of Insurance Regulation (OIR) by June 1, 2007. Since the time for filing has passed, and all insurers have filed with OIR, the bill deletes the obsolete language from the statute.

The bill deletes s. 627.7065(5), F.S., which requires the Department of Environmental Protection, in consultation with the Department of Financial Services, to submit a report of sinkhole database recommendations and other similar matters by December 31, 2005, to the Governor, the Chief Financial Officer, and the legislative presiding officers. The report of sinkhole database recommendations was filed by the Department of Environmental Protection before the deadline of December 31, 2005.

The bill repeals s. 627.7077, F.S., which requires the Florida State University College of Business Department of Risk Management and Insurance (Department of Risk Management) was directed by the Legislature to perform a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility. The Department of Risk Management submitted the report, required by the statute, to the Legislature on April 1, 2005.

The bill deletes s. 627.712(7), F.S., which provides an effective date of June 1, 2007, or at the latest, October 1, 2007, of the statute requiring residential property insurers to offer windstorm coverage for property insurance policies. This date has passed and insurance companies are now required to offer windstorm coverage.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 38-0; House 116-0

Committee on Banking and Insurance

HB 4129 — Residential Property/Evaluation Grant Program (Chapter 2011-12, L.O.F.)

by Rep. Crisafulli (SB 638 by Senator Simmons)

The bill (Chapter 2011-12, L.O.F.) deletes s. 627.0629(8), F.S., relating to a grant program for the evaluation of residential property structural soundness. The program was established in 1997 for homeowners insured by the Florida Windstorm Underwriting Association (FWUA) to obtain evaluations of the wind resistance of their homes. The Department of Community Affairs was required by statute to establish by rule standards to govern evaluation, recommendations for retrofitting, the eligibility of those who would perform the evaluations, and the selection of the applicants to obtain the grants.

In 2002, the Florida Legislature combined the FWUA with the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and thereby created Citizens Property Insurance Corporation (Citizens). At that point, Citizens assumed the responsibility to administer the program. When the program was established, it was to be effected "to the extent that funds are provided for this purpose in the General Appropriations Act (GAA)." Representatives of the Division of Emergency Management within the Department of Community Affairs report that the agency has not promulgated rules to establish the grant program because funds have not been provided by the GAA. Representatives for Citizens state that no grants have been awarded since its inception in 2002 because funds have not been provided by the GAA. Because the program has never been activated, the bill deletes the language that created the program.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 37-0; House 112-6

HB 4181 — Prohibited Activities of Citizens Property Insurance Corporation

by Rep. Davis (SB 634 by Senator Simmons)

The bill repeals s. 215.55951, F.S., which currently prohibits Citizens Property Insurance Corporation (Citizens) from justifying a rate or assessment increase based on amendments enacted in Chapter 2008-66, L.O.F., to the Insurance Capital Build-Up Incentive Program (the "Program"). Chapter 2008-66, L.O.F., funded the Program by requiring Citizens to transfer $250 million to the General Revenue Fund for transfer to the State Board of Administration to fund the Program. No loans were issued using Citizens monies because the transfer was vetoed by the Governor.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 38-0; House 116-0