

Bill No. CS for CS for SB 1488

Barcode 310140

CHAMBER ACTION

Senate

House

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Senator Garcia moved the following **substitute for amendment**
(711894):

Senate Amendment (with title amendment)

On page 58, line 15, through
page 64, line 14, delete those lines

and insert:

~~(b)(2)~~ "Sinkhole loss" means structural damage to the building, including the foundation, caused by sinkhole activity. Contents coverage shall apply only if there is structural damage to the building caused by sinkhole activity.

~~(c)(3)~~ "Sinkhole activity loss" means ~~actual physical damage to the property covered arising out of or caused by sudden~~ settlement or systematic weakening collapse of the earth supporting such property only when such settlement or systematic weakening collapse results from movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect ~~action~~ of water on a limestone or similar rock formation.

(d) "Engineer" means a person, as defined in s.

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1 471.005, who has a bachelor degree or higher in engineering
 2 with a specialty in the geotechnical engineering field. An
 3 engineer must have geotechnical experience and expertise in
 4 the identification of sinkhole activity as well as other
 5 potential causes of damage to the structure.

6 (e) "Professional geologist" means a person, as
 7 defined by s. 492.102, who has a bachelor degree or higher in
 8 geology or related earth science with expertise in the geology
 9 of Florida. A professional geologist must have geological
 10 experience and expertise in the identification of sinkhole
 11 activity as well as other potential geologic causes of damage
 12 to the structure.

13 (3)(4) Every insurer authorized to transact property
 14 insurance in this state shall make a proper filing with the
 15 office for the purpose of extending the appropriate forms of
 16 property insurance to include coverage for ~~insurable~~ sinkhole
 17 losses.

18 Section 17. Section 627.7065, Florida Statutes, is
 19 created to read:

20 627.7065 Database of information relating to
 21 sinkholes; the Department of Financial Services and the
 22 Department of Environmental Protection.--

23 (1) The Legislature finds that there has been a
 24 dramatic increase in the number of sinkholes and insurance
 25 claims for sinkhole damage in the state during the past 10
 26 years. Accordingly, the Legislature recognizes the need to
 27 track current and past sinkhole activity and to make the
 28 information available for prevention and remediation
 29 activities. The Legislature further finds that the Florida
 30 Geological Survey of the Department of Environmental
 31 Protection has created a partial database of some sinkholes

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1 identified in Florida, although the database is not reflective
2 of all sinkholes or insurance claims for sinkhole damage. The
3 Legislature determines that creating a complete electronic
4 database of sinkhole activity serves an important purpose in
5 protecting the public and in studying property claims
6 activities in the insurance industry.

7 (2) The Department of Financial Services, including
8 the employee of the Division of Consumer Services designated
9 as the primary contact for consumers on issues relating to
10 sinkholes, and the Office of the Insurance Consumer Advocate
11 shall consult with the Florida Geological Survey and the
12 Department of Environmental Protection to implement a
13 statewide automated database of sinkholes and related activity
14 identified in the state.

15 (3) Representatives of the Department of Financial
16 Services, with the agreement of the Department of
17 Environmental Protection, shall determine the form and content
18 of the database. The content may include standards for
19 reporting and investigating sinkholes for inclusion in the
20 database and requirements for insurers to report to the
21 departments the receipt of claims involving sinkhole loss and
22 other similar activities. The Department of Financial Services
23 may require insurers to report present and past data of
24 sinkhole claims. The database also may include information of
25 damage due to ground settling and other subsidence activity.

26 (4) The Department of Financial Services may manage
27 the database or may contract for its management and
28 maintenance. The Department of Environmental Protection shall
29 investigate reports of sinkhole activity and include its
30 findings and investigations in the database.

31 (5) The Department of Environmental Protection, in

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1 consultation with the Department of Financial Services, shall
 2 present a report of activities relating to the sinkhole
 3 database, including recommendations regarding the database and
 4 similar matters, to the Governor, the Speaker of the House of
 5 Representatives, the President of the Senate, and the Chief
 6 Financial Officer by December 31, 2005. The report may
 7 consider the need for the Legislature to create an entity to
 8 study the increase in sinkhole activity in the state and other
 9 similar issues relating to sinkhole damage, including
 10 recommendations and costs for staffing the entity. The report
 11 may include other information, as appropriate.

12 (6) The Department of Financial Services, in
 13 consultation with the Department of Environmental Protection,
 14 may adopt rules to implement this section.

15 Section 18. Section 627.707, Florida Statutes, is
 16 amended to read:

17 627.707 ~~Minimum~~ Standards for investigation of
 18 sinkhole claims by insurers; nonrenewals.--

19 ~~(1)~~ Upon receipt of a claim for a sinkhole loss, an
 20 insurer must meet the following ~~minimum~~ standards in
 21 investigating a claim:

22 ~~(1)(a) Upon receipt of a claim for a sinkhole loss,~~
 23 The insurer must make an inspection of the insured's premises
 24 to determine if there has been physical damage to the
 25 structure which ~~may~~ might be the result of sinkhole activity.

26 ~~(b) If, upon the investigation pursuant to paragraph~~
 27 ~~(a), the insurer discovers damage to a structure which is~~
 28 ~~consistent with sinkhole activity or if the structure is~~
 29 ~~located in close proximity to a structure in which sinkhole~~
 30 ~~damage has been verified, then prior to denying a claim, the~~
 31 ~~insurer must obtain a written certification from an individual~~

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1 ~~qualified to determine the existence of sinkhole activity,~~
2 ~~stating that the cause of the claim is not sinkhole activity,~~
3 ~~and that the analysis conducted was of sufficient scope to~~
4 ~~eliminate sinkhole activity as the cause of damage within a~~
5 ~~reasonable professional probability. The written certification~~
6 ~~must also specify the professional discipline and professional~~
7 ~~licensure or registration under which the analysis was~~
8 ~~conducted.~~

9 (2) Following the insurer's initial inspection, the
10 insurer shall engage an engineer or a professional geologist
11 to conduct testing as provided in s. 627.7072 to determine the
12 cause of the loss within a reasonable professional probability
13 and issue a report as provided in s. 627.7073, if:

14 (a) The insurer is unable to identify a valid cause of
15 the damage or discovers damage to the structure which is
16 consistent with sinkhole loss; or

17 (b) The policyholder demands testing in accordance
18 with this section or s. 627.7072.

19 (3) Following the initial inspection of the insured
20 premises, the insurer shall provide written notice to the
21 policyholder disclosing the following information:

22 (a) What the insurer has determined to be the cause of
23 damage, if the insurer has made such a determination.

24 (b) A statement of the circumstances under which the
25 insurer is required to engage an engineer or a professional
26 geologist to verify or eliminate sinkhole loss and to engage
27 an engineer to make recommendations regarding land and
28 building stabilization and foundation repair.

29 (c) A statement regarding the right of the
30 policyholder to request testing by an engineer or a
31 professional geologist and the circumstances under which the

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1 policyholder may demand certain testing.

2 (4) If the insurer determines that there is no
3 sinkhole loss, the insurer may deny the claim. If the insurer
4 denies the claim, without performing testing under s.
5 627.7072, the policyholder may demand testing by the insurer
6 under s. 627.7072. The policyholder's demand for testing must
7 be communicated to the insurer in writing after the
8 policyholder's receipt of the insurer's denial of the claim.

9 (5)(a) Subject to paragraph (b), if a sinkhole loss is
10 verified, the insurer shall pay to stabilize the land and
11 building and repair the foundation in accordance with the
12 recommendations of the engineer as provided under s. 627.7073,
13 and in consultation with the policyholder, subject to the
14 coverage and terms of the policy. The insurer shall pay for
15 other repairs to the structure and contents in accordance with
16 the terms of the policy.

17 (b) The insurer may limit its payment to the actual
18 cash value of the sinkhole loss, not including underpinning or
19 grouting or any other repair technique performed below the
20 existing foundation of the building, until the policyholder
21 enters into a contract for the performance of building
22 stabilization or foundation repairs. After the policyholder
23 enters into the contract, the insurer shall pay the amounts
24 necessary to begin and perform such repairs as the work is
25 performed and the expenses are incurred. The insurer may not
26 require the policyholder to advance payment for such repairs.

27 (6) Except as provided in subsection (7), the fees and
28 costs of the engineer or the professional geologist shall be
29 paid by the insurer.

30 (7)(c) If the insurer obtains, pursuant to s. 627.7073
31 paragraph (b), written certification that there is no sinkhole

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1 loss or that the cause of the damage claim was not sinkhole
2 activity, and if the policyholder has submitted the sinkhole
3 claim without good faith grounds for submitting such claim,
4 the policyholder shall reimburse the insurer for 50 percent of
5 the actual costs ~~cost~~ of the analyses and services provided
6 analysis under ss. 627.7072 and 627.7073 ~~paragraph (b)~~;
7 however, a policyholder is not required to reimburse an
8 insurer more than \$2,500 with respect to any claim. A
9 policyholder is required to pay reimbursement under this
10 subsection ~~paragraph~~ only if the insurer, prior to ordering
11 the analysis under s. 627.7072 ~~paragraph (b)~~, informs the
12 policyholder in writing of the policyholder's potential
13 liability for reimbursement and gives the policyholder the
14 opportunity to withdraw the claim.

15 (8)(2) No insurer shall nonrenew any policy of
16 property insurance on the basis of filing of claims for
17 partial loss caused by sinkhole damage or clay shrinkage as
18 long as the total of such payments does not exceed the current
19 policy limits of coverage for property damage, and provided
20 the insured has repaired the structure in accordance with the
21 engineering recommendations upon which any payment or policy
22 proceeds were based.

23 (9) The insurer may engage a structural engineer to
24 make recommendations as to the repair of the structure.

25 Section 19. Section 627.7072, Florida Statutes, is
26 created to read:

27 627.7072 Testing standards for sinkholes.--

28 (1) The engineer and professional geologist shall
29 perform such tests as sufficient, in their professional
30 opinion, to determine the presence or absence of sinkhole loss
31 or other cause of damage within reasonable professional

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1 probability and for the engineer to make recommendations
2 regarding necessary building stabilization, and foundation
3 repair.

4 (2) Testing by a professional geologist shall be
5 conducted in compliance with the Florida Geological Survey
6 Special Publication No. 57 (2005).

7 Section 20. Section 627.7073, Florida Statutes, is
8 created to read:

9 627.7073 Sinkhole reports.--

10 (1) Upon completion of testing as provided in s.
11 627.7072, the engineer and professional geologist shall issue
12 a report and certification to the insurer and the policyholder
13 as provided in this section.

14 (a) Sinkhole loss is verified if, based upon tests
15 performed in accordance with s. 627.7072, an engineer and a
16 professional geologist issue a written report and
17 certification stating:

18 1. That the cause of the actual physical and
19 structural damage is sinkhole activity within a reasonable
20 professional probability.

21 2. That the analyses conducted were of sufficient
22 scope to identify sinkhole activity as the cause of damage
23 within a reasonable professional probability.

24 3. A description of the tests performed.

25 4. A recommendation by the engineer of methods for
26 stabilizing the land and building and for making repairs to
27 the foundation.

28 (b) If sinkhole activity is eliminated as the cause of
29 damage to the structure, the engineer and professional
30 geologist shall issue a written report and certification to
31 the policyholder and the insurer stating:

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1 1. That the cause of the damage is not sinkhole
2 activity within a reasonable professional probability.

3 2. That the analyses and tests conducted were of
4 sufficient scope to eliminate sinkhole activity as the cause
5 of damage within a reasonable professional probability.

6 3. A statement of the cause of the damage within a
7 reasonable professional probability.

8 4. A description of the tests performed.

9 (c) The respective findings, opinions, and
10 recommendations of the engineer and professional geologist as
11 to the verification or elimination of a sinkhole loss and the
12 findings, opinions, and recommendations of the engineer as to
13 land and building stabilization and foundation repair shall be
14 presumed correct.

15 (2) Any insurer that has paid a claim for a sinkhole
16 loss shall file a copy of the report and certification,
17 prepared pursuant to subsection (1), with the county property
18 appraiser who shall record the report and certification with
19 the parcel number. The insurer shall bear the cost of filing
20 and recording the report and certification. There shall be no
21 cause of action or liability against an insurer for compliance
22 with this section. The seller of real property upon which a
23 sinkhole claim has been made shall disclose to the buyer of
24 such property that a claim has been paid and whether or not
25 the full amount of the proceeds were used to repair the
26 sinkhole damage.

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28 (Redesignate subsequent sections.)

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 4, line 11, through
4 page 5, line 1, delete those lines

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6 and insert:

7 insurance; providing definitions; creating s.
8 627.7065, F.S.; providing legislative findings;
9 requiring the Department of Financial Services
10 and the Office of the Insurance Consumer
11 Advocate to consult with the Florida Geological
12 Survey and the Department of Environmental
13 Protection to implement a statewide automated
14 database of sinkholes and related activity;
15 providing requirements for the form and content
16 of the database; authorizing the Department of
17 Financial Services to require insurers to
18 provide certain information; providing for
19 management of the database; requiring the
20 department to investigate sinkhole activity
21 reports and include findings and investigations
22 in the database; requiring the Department of
23 Environmental Protection to report on the
24 database to the Governor, Legislature, and
25 Chief Financial Officer; authorizing the
26 Department of Financial Services to adopt
27 implementing rules; amending s. 627.707, F.S.;
28 revising standards for investigations of
29 sinkhole claims by insurers; requiring an
30 insurer to engage an engineer or professional
31 geologist for certain purposes; requiring a

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1 report under certain circumstances; requiring
2 an insurer to provide written notice to a
3 policyholder disclosing certain information;
4 authorizing an insurer to deny a claim under
5 certain circumstances; authorizing a
6 policyholder to demand certain testing;
7 providing requirements; specifying required
8 activities for insurers if a sinkhole loss is
9 verified; specifying payment requirements for
10 insurers; providing limitations; requiring the
11 insurer to pay fees of the engineer and
12 geologist; authorizing an insurer to engage a
13 structural engineer for certain purposes;
14 creating s. 627.7072, F.S.; specifying
15 requirements for sinkhole testing by engineers
16 and geologists; creating s. 627.7073, F.S.;
17 providing reporting requirements for engineers
18 and geologists after testing for sinkholes;
19 specifying a presumption of correctness of
20 certain findings; requiring an insurer paying a
21 sinkhole loss claim to file a report and
22 certification with the county property
23 appraiser; requiring the property appraiser to
24 record the report and certification; requiring
25 the insurer to bear the cost of filing and
26 recording; requiring a seller of certain
27 property to make certain disclosures to
28 property buyers under certain circumstances;
29 creating s. 627.711, F.S.;

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