

Bill No. CS for CS for SB 1488

Barcode 711894

CHAMBER ACTION

Senate

House

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2	14/RS/2R	.
3	05/05/2005 08:26 PM	.
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11 Senator Garcia moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 59, line 8, through

15 page 64, line 14, delete those lines

16

17 and insert: sinkhole activity as well as other potential

18 geologic causes of damage to the structure.

19 (3)(4) Every insurer authorized to transact property

20 insurance in this state shall make a proper filing with the

21 office for the purpose of extending the appropriate forms of

22 property insurance to include coverage for ~~insurable~~ sinkhole

23 losses.

24 Section 17. Section 627.7065, Florida Statutes, is

25 created to read:

26 627.7065 Database of information relating to

27 sinkholes; the Department of Financial Services and the

28 Department of Environmental Protection.--

29 (1) The Legislature finds that there has been a

30 dramatic increase in the number of sinkholes and insurance

31 claims for sinkhole damage in the state during the past 10

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1 years. Accordingly, the Legislature recognizes the need to
2 track current and past sinkhole activity and to make the
3 information available for prevention and remediation
4 activities. The Legislature further finds that the Florida
5 Geological Survey of the Department of Environmental
6 Protection has created a partial database of some sinkholes
7 identified in Florida, although the database is not reflective
8 of all sinkholes or insurance claims for sinkhole damage. The
9 Legislature determines that creating a complete electronic
10 database of sinkhole activity serves an important purpose in
11 protecting the public and in studying property claims
12 activities in the insurance industry.

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

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

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1 (4) The Department of Financial Services may manage
 2 the database or may contract for its management and
 3 maintenance. The Department of Environmental Protection shall
 4 investigate reports of sinkhole activity and include its
 5 findings and investigations in the database.

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

18 (6) The Department of Financial Services, in
 19 consultation with the Department of Environmental Protection,
 20 may adopt rules to implement this section.

21 Section 18. Section 627.707, Florida Statutes, is
 22 amended to read:

23 627.707 ~~Minimum~~ Standards for investigation of
 24 sinkhole claims by insurers; nonrenewals.--

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

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

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1 ~~(b) If, upon the investigation pursuant to paragraph~~
2 ~~(a), the insurer discovers damage to a structure which is~~
3 ~~consistent with sinkhole activity or if the structure is~~
4 ~~located in close proximity to a structure in which sinkhole~~
5 ~~damage has been verified, then prior to denying a claim, the~~
6 ~~insurer must obtain a written certification from an individual~~
7 ~~qualified to determine the existence of sinkhole activity,~~
8 ~~stating that the cause of the claim is not sinkhole activity,~~
9 ~~and that the analysis conducted was of sufficient scope to~~
10 ~~eliminate sinkhole activity as the cause of damage within a~~
11 ~~reasonable professional probability. The written certification~~
12 ~~must also specify the professional discipline and professional~~
13 ~~licensure or registration under which the analysis was~~
14 ~~conducted.~~

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

20 (a) The insurer is unable to identify a valid cause of
21 the damage or discovers damage to the structure which is
22 consistent with sinkhole loss; or

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

25 (3) Following the initial inspection of the insured
26 premises, the insurer shall provide written notice to the
27 policyholder disclosing the following information:

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

30 (b) A statement of the circumstances under which the
31 insurer is required to engage an engineer or a professional

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1 geologist to verify or eliminate sinkhole loss and to engage
2 an engineer to make recommendations regarding land and
3 building stabilization and foundation repair.

4 (c) A statement regarding the right of the
5 policyholder to request testing by an engineer or a
6 professional geologist and the circumstances under which the
7 policyholder may demand certain testing.

8 (4) If the insurer determines that there is no
9 sinkhole loss, the insurer may deny the claim. If the insurer
10 denies the claim, without performing testing under s.
11 627.7072, the policyholder may demand testing by the insurer
12 under s. 627.7072. The policyholder's demand for testing must
13 be communicated to the insurer in writing after the
14 policyholder's receipt of the insurer's denial of the claim.

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

23 (b) The insurer may limit its payment to the actual
24 cash value of the sinkhole loss until such time as expenses
25 related to land and building stabilization and foundation
26 repairs are incurred.

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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