



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty—This bill requires property owners to disclose the discovery of sinkholes on private property. This bill will impose a new obligation on geologists and engineers conducting sinkhole investigations by requiring them to file a report with the clerk of the court upon discovery of evidence of a sinkhole.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current situation

Under current law, there is no statutory requirement that owners of properties with sinkholes inform potential buyers of the problem,<sup>1</sup> although the Florida Supreme Court has held that:

where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer. This duty is equally applicable to all forms of real property, new and used.<sup>2</sup>

Landowners who discover sinkholes are “encouraged” to make a report to the Florida Geological Survey, which keeps a database of reported sinkholes, but there is no requirement that sinkholes be reported and no mechanism for such enforcement.<sup>3</sup> No state agency currently has the authority or responsibility to conduct sinkhole inspections.<sup>4</sup> And, unless a sinkhole contains groundwater, no permit is required to fill it.<sup>5</sup>

Although insurance companies have tried to assess the risk of a sinkhole occurring in a certain area, the tests necessary to make an accurate determination of sinkhole risk are prohibitively expensive. Thus, most people rely on maps of local geology and historical sinkhole activity.<sup>6</sup> Professional geologists can perform a number of tests to determine, with some reliability, the likelihood of sinkhole formation in a given area, but these tests can be inconclusive, and the cost of a detailed survey is too expensive for most homeowners to undertake.<sup>7</sup> According to a Florida Insurance Council lobbyist, the cost of sinkhole testing ranges from approximately \$8,000 to \$10,000.<sup>8</sup> The insurance industry would like to see the legislature “tighten” the definition of sinkholes, standardize sinkhole testing procedures, and require homeowners to publicly record sinkhole claim payoffs.<sup>9</sup>

Most real estate sale disclosure forms include a sinkhole disclosure statement, although new construction sites are not generally tested for sinkholes, especially not on private home sites, as the building codes do not require such testing.<sup>10</sup>

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<sup>1</sup> Ron Hurtibise, *Study Likely to Call for State-Backed Sinkhole Insurance*, DAYTONA BEACH NEWS-JOURNAL ONLINE, Feb. 8, 2005 available at <http://www.newsjournalonline.com/cgi-bin/printme.asp> (last visited Feb. 8, 2005).

<sup>2</sup> *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

<sup>3</sup> Florida Department of Environmental Protection, *Sinkhole Questions*, at <http://www.dep.state.fl.us/geology/feedback/faq.htm> (last visited Feb. 14, 2005).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Hurtibise, *State-Backed Sinkhole Insurance*.

<sup>9</sup> *Id.*

<sup>10</sup> *Sinkhole Questions*.

## HB 365

This bill creates a requirement that when a property owner contracts with a professional licensed geologist or a professional licensed geotechnical engineer to test property for sinkholes, the geologist or engineer must file a report of the investigation with the clerk of the court if the geologist or engineer finds any evidence of a sinkhole. The geologist or engineer will have to pay a filing and recording fee, not to exceed ten dollars, when submitting the sinkhole report, and will also have to inform the property owner of the duty to disclose the filing and recording requirement. The clerk of the court shall record the report of the investigation with the certificate of title or deed for such property.

Section 28.24(12)(a)-(b), F.S., states that the cost for recording, indexing, and filing any instrument shall be five dollars for the first page and four dollars for each additional page or fraction thereof. Section 28.24(e), F.S., provides that an additional service charge of four dollars per page shall be paid to the clerk of the court for each instrument listed in s. 28.222, F.S, which includes any instruments relating to the ownership of real property and any other instrument required or authorized by law to be recorded. This bill's ten dollar fee limit for sinkhole reports might be significantly less than the otherwise-required statutory cost for filing a comparable document.

This bill may help prevent the insurance fraud that sometimes occurs when a homeowner collects on an insurance policy as the result of a sinkhole, but fails to then use the money to repair the problem and fails to disclose to potential buyers the fact that a sinkhole exists on the property.<sup>11</sup> A property owner who discovers a sinkhole on a piece of property might have a greater incentive to properly use any insurance funds collected to fix the sinkhole, since the sinkhole's existence will now be a matter of public record. With the passage of this bill, when a professional geologist or engineer is hired by a property owner to test the land for sinkholes, and a sinkhole is discovered, the geologist or engineer will have to register that fact with the property records. A secondary benefit of this bill is that it may reduce the number of unknown sinkholes in the state.

### C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section requiring that a professional geologist or professional geotechnical engineer, hired by a property owner to conduct a sinkhole investigation, must file a report with the clerk of the court upon finding evidence of the presence of a sinkhole, which the clerk must record with the certificate of title or deed for the property.

Section 2. Provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The clerk of court will collect a filing and reporting fee, not to exceed ten dollars, for each sinkhole report.

#### 2. Expenditures:

Unknown.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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<sup>11</sup> Hurtibise, *State-Backed Sinkhole Insurance*.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The only direct economic impact will be the ten dollar filing fee when a geologist or engineer discovers a sinkhole. How many sinkholes will be found and whether this will have a significant financial impact on the private sector is unknown.

D. FISCAL COMMENTS:

This bill is not expected to have a significant financial impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Civil Justice Committee considered this bill and adopted an amendment. The amendment adds "licensed professional geologists" to the category of individuals responsible for filing sinkhole investigation reports, should they discover evidence of a sinkhole when hired by a property owner to conduct a sinkhole investigation. The amendment also restricts the category of responsible engineers to licensed professional geotechnical engineers who are qualified in geology. The bill was reported favorably as amended as a committee substitute.