

Bill No. PCS for SB 1980 (070118)

Barcode 522456

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Fasano) recommended
the following amendment:

Senate Amendment (with title amendment)

On page 88, line 18, through
page 94, line 2, delete those lines

and insert:

Section 16. Subsection (1) of section 627.706, Florida
Statutes, is amended to read:

627.706 Sinkhole insurance; definitions.--

(1) Every insurer authorized to transact property
insurance in this state shall make available coverage for
insurable sinkhole losses on any structure, including contents
of personal property contained therein, to the extent provided
in the form to which the sinkhole coverage attaches. A policy
for residential property insurance may include a deductible
amount applicable to sinkhole losses which is no less than 1
percent of the policy dwelling limits. Such a policy may also
include one or more additional deductible amounts applicable
to sinkhole losses equal to 2 percent, 5 percent, and 10

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1 percent, with appropriate premium discounts offered with each
2 deductible amount.

3 Section 17. Subsections (2), (3), (5), (6), and (9) of
4 section 627.707, Florida Statutes, are amended to read:

5 627.707 Standards for investigation of sinkhole claims
6 by insurers; nonrenewals.--Upon receipt of a claim for a
7 sinkhole loss, an insurer must meet the following standards in
8 investigating a claim:

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

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

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

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

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

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

31 (c) A statement regarding the right of the

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1 | policyholder to request testing by a professional ~~an~~ engineer
2 | or a professional geologist and the circumstances under which
3 | the policyholder may demand certain testing.

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

12 | (b) The insurer may limit its payment to the actual
13 | cash value of the sinkhole loss, not including underpinning or
14 | grouting or any other repair technique performed below the
15 | existing foundation of the building, until the policyholder
16 | enters into a contract for the performance of building
17 | stabilization or foundation repairs. After the policyholder
18 | enters into the contract, the insurer shall pay the amounts
19 | necessary to begin and perform such repairs as the work is
20 | performed and the expenses are incurred. The insurer may not
21 | require the policyholder to advance payment for such repairs.
22 | If repair covered by a personal lines residential property
23 | insurance policy has begun and the professional engineer
24 | selected or approved by the insurer determines that the repair
25 | cannot be completed within the policy limits, the insurer must
26 | either complete the professional engineer's recommended repair
27 | or tender the policy limits to the policyholder without a
28 | reduction for the repair expenses incurred.

29 | (c) Upon the insurer's obtaining the written approval
30 | of the policyholder and any lienholder, the insurer may make
31 | payment directly to the persons selected by the policyholder

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1 to perform the land and building stabilization and foundation
 2 repairs. The decision by the insurer to make payment to such
 3 persons does not hold the insurer liable for the work
 4 performed.

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

8 (9) The insurer may engage a professional structural
 9 engineer to make recommendations as to the repair of the
 10 structure.

11 Section 18. Subsection (1) of section 627.7072,
 12 Florida Statutes, is amended to read:

13 627.7072 Testing standards for sinkholes.--

14 (1) The professional engineer and professional
 15 geologist shall perform such tests as sufficient, in their
 16 professional opinion, to determine the presence or absence of
 17 sinkhole loss or other cause of damage within reasonable
 18 professional probability and for the professional engineer to
 19 make recommendations regarding necessary building
 20 stabilization and foundation repair.

21 Section 19. Subsections (1) and (2) of section
 22 627.7073, Florida Statutes, are amended to read:

23 627.7073 Sinkhole reports.--

24 (1) Upon completion of testing as provided in s.
 25 627.7072, the professional engineer and professional geologist
 26 shall issue a report and certification to the insurer and the
 27 policyholder as provided in this section.

28 (a) Sinkhole loss is verified if, based upon tests
 29 performed in accordance with s. 627.7072, a professional an
 30 engineer and a professional geologist issue a written report
 31 and certification stating:

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1 1. That the cause of the actual physical and
2 structural damage is sinkhole activity within a reasonable
3 professional probability.

4 2. That the analyses conducted were of sufficient
5 scope to identify sinkhole activity as the cause of damage
6 within a reasonable professional probability.

7 3. A description of the tests performed.

8 4. A recommendation by the professional engineer of
9 methods for stabilizing the land and building and for making
10 repairs to the foundation.

11 (b) If sinkhole activity is eliminated as the cause of
12 damage to the structure, the professional engineer and
13 professional geologist shall issue a written report and
14 certification to the policyholder and the insurer stating:

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

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

20 3. A statement of the cause of the damage within a
21 reasonable professional probability.

22 4. A description of the tests performed.

23 (c) The respective findings, opinions, and
24 recommendations of the professional engineer and professional
25 geologist as to the cause of distress to the property
26 ~~verification or elimination of a sinkhole loss~~ and the
27 findings, opinions, and recommendations of the professional
28 engineer as to land and building stabilization and foundation
29 repair are conclusive, unless contrary findings and
30 conclusions are proven by clear and convincing evidence shall
31 ~~be presumed correct.~~

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1 (2) Any insurer that has paid a claim for a sinkhole
2 loss shall file a copy of the report and certification,
3 prepared pursuant to subsection (1), with the county clerk of
4 court ~~property appraiser~~, who shall record the report and
5 certification with the parcel number. The insurer shall bear
6 the cost of filing and recording the report and certification.
7 There shall be no cause of action or liability against an
8 insurer for compliance with this section. The seller of real
9 property upon which a sinkhole claim has been made shall
10 disclose to the buyer of such property that a claim has been
11 paid and whether or not the full amount of the proceeds were
12 used to repair the sinkhole damage.

13 Section 20. Section 627.7074, Florida Statutes, is
14 created to read:

15 627.7074 Alternative procedure for resolution of
16 disputed sinkhole insurance claims.--

17 (1) As used in this section:

18 (a) "Neutral evaluation" means the alternative dispute
19 resolution provided for in this section.

20 (b) "Neutral evaluator" means a professional engineer
21 or a professional geologist who has completed a course of
22 study in alternative dispute resolution designed or approved
23 by the department for use in the neutral evaluation process,
24 who is determined to be fair and impartial, and who is
25 attempting to resolve the dispute or claim under this section.

26 (c) "Department" means the Department of Financial
27 Services.

28 (2) The department shall certify and maintain a list
29 of persons who are neutral evaluators.

30 (3) Following the receipt of the report provided under
31 s. 627.7073 or the denial of a claim for a sinkhole loss, the

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1 insurer shall notify the policyholder of his or her right to
2 participate in the neutral evaluation program under this
3 section. Neutral evaluation supersedes the alternative dispute
4 resolution process under s. 627.7015. The department shall
5 prepare a consumer information pamphlet for distribution by
6 the insurer to policyholders. The pamphlet shall clearly
7 describe the neutral evaluation process and include directions
8 and forms necessary for the policyholder to request a neutral
9 evaluation.

10 (4) Neutral evaluation is optional and nonbinding.
11 Either the policyholder or the insurer may decline to
12 participate. A request for neutral evaluation shall be filed
13 with the department by the policyholder or the insurer on a
14 form approved by the department. The request for neutral
15 evaluation must state the reason for the request and must
16 include an explanation of all the issues in dispute at the
17 time of the request. Filing a request for neutral evaluation
18 tolls the applicable time requirements for filing suit for a
19 period of 60 days following the conclusion of the neutral
20 evaluation process or the time prescribed in s. 95.11,
21 whichever is later.

22 (5) Neutral evaluation shall be conducted as an
23 informal process in which formal rules of evidence and
24 procedure need not be observed. A party to neutral evaluation
25 is not required to attend neutral evaluation if a
26 representative of the party attends and has the authority to
27 make a binding decision on behalf of the party. All parties
28 shall participate in the evaluation in good faith.

29 (6) The insurer shall pay the costs associated with
30 the neutral evaluation.

31 (7) Upon receipt of a request for neutral evaluation,

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1 the department shall refer the request to a neutral evaluator.

2 The neutral evaluator shall notify the policyholder and the
3 insurer of the date, time, and place of the neutral evaluation
4 conference. The conference may be held by telephone, if
5 feasible and desirable. The neutral evaluation conference
6 shall be held within 45 days after receipt of the request by
7 the department.

8 (8) The department shall adopt rules of procedure for
9 the neutral evaluation process.

10 (9) For policyholders not represented by an attorney,
11 a consumer affairs specialist of the department or an employee
12 designated as the primary contact for consumers on issues
13 relating to sinkholes under s. 20.121 shall be available for
14 consultation to the extent that he or she may lawfully do so.

15 (10) Disclosures and information divulged in the
16 neutral evaluation process are not admissible in any
17 subsequent action or proceeding relating to the claim or to
18 the cause of action giving rise to the claim, except as
19 provided in subsection (13).

20 (11) Any court proceeding related to the subject
21 matter of the neutral evaluation shall be stayed pending
22 completion of the neutral evaluation.

23 (12) For matters that are not resolved by the parties
24 at the conclusion of the neutral evaluation, the neutral
25 evaluator shall prepare a report stating that in his or her
26 opinion the sinkhole loss has been verified or eliminated and,
27 if verified, the need for and estimated costs of stabilizing
28 the land and any covered structures or buildings and other
29 appropriate remediation or structural repairs. The evaluator's
30 report shall be sent to all parties in attendance at the
31 neutral evaluation and to the department.

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1 (13) The recommendation of the neutral evaluator is
 2 not binding on any party and the parties retain access to
 3 courts. The neutral evaluator's written recommendation is
 4 admissible in any subsequent action or proceeding relating to
 5 the claim or to the cause of action giving rise to the claim
 6 only for purposes of determining the award of attorney's fees.

7 (14) If the policyholder declines to participate in
 8 neutral evaluation requested by the insurer or declines to
 9 resolve the matter in accordance with the recommendation of
 10 the neutral evaluator pursuant to this section, the insurer
 11 shall not be liable for attorney's fees under s. 627.428 or
 12 other provisions of the insurance code or for extra
 13 contractual damages related to a claim for a sinkhole loss.

14 (15) A party may seek judicial review of the
 15 recommendation of the neutral evaluator to determine whether
 16 the recommendation is reasonable. A recommendation is
 17 reasonable unless it was procured by corruption, fraud, or
 18 other undue means; there was evident partiality by the neutral
 19 evaluator or misconduct prejudicing the rights of any party;
 20 or the neutral evaluator exceeded the authority and power
 21 granted by this subsection. If the court declares the
 22 recommendation is not reasonable, the neutral evaluation
 23 recommendation shall be vacated.

24 Section 21. (1) By February 1, 2007, the Office of
 25 Insurance Regulation shall calculate a presumed factor to
 26 reflect the effect of the changes made in this act to rates
 27 filed by residential property insurers providing sinkhole loss
 28 coverage. The office shall issue a notice informing all
 29 insurers writing residential property insurance of the
 30 presumed factor.

31 (2) In determining the presumed factor, the office

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1 shall use generally accepted actuarial techniques and
2 standards in calculating the expected effect on losses,
3 expenses, and investment income of the insurer.

4 (3) The office may, by contract, hire an appropriate
5 vendor to determine the presumed factor.

6 (4) Each residential property insurer shall, at its
7 next annual rate filing after May 1, 2007, reflect an overall
8 rate reduction at least as great as the presumed factor
9 determined pursuant to subsection (1).

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11 (Redesignate subsequent sections.)

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

15 And the title is amended as follows:

16 On page 5, line 26, through
17 page 6, line 13, delete those lines

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19 and insert:

20 the Office of Insurance Regulation; amending s.
21 627.706, F.S.; providing for a deductible
22 amount applicable to sinkhole losses in a
23 policy for residential property insurance;
24 amending s. 627.707, F.S.; revising references
25 to certain engineers; authorizing insurers to
26 make direct payment for certain repairs;
27 excluding insurers from liability for repairs
28 under certain circumstances; amending s.
29 627.7072, F.S.; revising references to certain
30 engineers; amending s. 627.7073, F.S.; revising
31 a presumption relating to the findings,

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1 opinions, and recommendations in sinkhole
2 reports; providing for the recording of
3 sinkhole reports by the clerk of court rather
4 than the property appraiser; creating s.
5 627.7074, F.S.; providing for an alternative
6 procedure for the resolution of disputed
7 sinkhole insurance claims which is optional,
8 nonbinding, and informal; providing
9 definitions; requiring the Department of
10 Financial Services to certify and maintain a
11 list of neutral evaluators, prepare a consumer
12 information pamphlet explaining the alternative
13 procedure, and adopt rules for the
14 implementation of an alternative procedure;
15 providing for payment of costs and attorney's
16 fees; preserving access to courts and
17 authorizing judicial review of neutral
18 evaluation recommendations; requiring that the
19 Office of Insurance Regulation calculate, and
20 notify certain insurers of, a presumed factor
21 to reflect the effect of changes made by the
22 act; specifying criteria for the presumed
23 factor; authorizing the office to hire an
24 appropriate vendor to calculate the factor;
25 requiring residential property insurers to
26 reflect an overall rate reduction concerning
27 the presumed factor; amending

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