

## CHAMBER ACTION

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1 The Insurance Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to sinkhole insurance; providing a short  
7 title; revising references to certain engineers; amending  
8 s. 627.707, F.S.; authorizing insurers to make direct  
9 payment for certain repairs; excluding insurers from  
10 liability for repairs under certain circumstances;  
11 revising the requirements for reimbursement of the insurer  
12 with respect to certain claims; reducing the amount a  
13 policyholder is required to reimburse an insurer;  
14 requiring the Department of Environmental Protection to  
15 maintain lists of qualified professionals to conduct  
16 certain tests; requiring insurers to obtain such lists and  
17 to engage with such professionals for certain tests;  
18 authorizing the department to adopt rules; creating s.  
19 627.7071, F.S.; providing legislative intent for the  
20 process of filing sinkhole claims; amending s. 627.7072,  
21 F.S.; revising testing standards for sinkholes; requiring  
22 a report upon conclusion of testing; requiring retention  
23 of certain information for a specified period; authorizing

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24 the department to adopt rules for the implementation of  
25 sinkhole testing and reporting; amending s. 627.7073,  
26 F.S.; revising a presumption relating to the findings,  
27 opinions, and recommendations in sinkhole reports;  
28 creating s. 627.7074, F.S.; providing for an alternative  
29 procedure for the resolution of disputed sinkhole  
30 insurance claims which is optional, nonbinding, and  
31 informal; providing definitions; requiring the Department  
32 of Financial Services to certify and maintain a list of  
33 neutral evaluators, prepare a consumer information  
34 pamphlet explaining the alternative procedure, and adopt  
35 rules for the implementation of an alternative procedure;  
36 providing for payment of costs and attorney's fees;  
37 preserving access to courts and authorizing judicial  
38 review of neutral evaluation recommendations; providing an  
39 effective date.

40  
41 Be It Enacted by the Legislature of the State of Florida:

42  
43 Section 1. This act may be cited as the "Sinkhole  
44 Insurance Relief Act."

45 Section 2. Subsections (2), (3), (5), (6), (7), and (9) of  
46 section 627.707, Florida Statutes, are amended, and subsection  
47 (10) is added to that section, to read:

48 627.707 Standards for investigation of sinkhole claims by  
49 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole  
50 loss, an insurer must meet the following standards in  
51 investigating a claim:

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52 (2) Following the insurer's initial inspection, the  
53 insurer shall engage a professional ~~an~~ engineer or a  
54 professional geologist, chosen by the department in accordance  
55 with subsection (10), to conduct testing as provided in s.  
56 627.7072 to determine the cause of the loss within a reasonable  
57 professional probability and issue a report as provided in s.  
58 627.7073, if:

59 (a) The insurer is unable to identify a valid cause of the  
60 damage or discovers damage to the structure which is consistent  
61 with sinkhole loss; or

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

64 (3) Following the initial inspection of the insured  
65 premises, the insurer shall provide written notice to the  
66 policyholder disclosing the following information:

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

69 (b) A statement of the circumstances under which the  
70 insurer is required to engage a professional ~~an~~ engineer or a  
71 professional geologist to verify or eliminate sinkhole loss and  
72 to engage a professional ~~an~~ engineer to make recommendations  
73 regarding land and building stabilization and foundation repair.

74 (c) A statement regarding the right of the policyholder to  
75 request testing by a professional ~~an~~ engineer or a professional  
76 geologist and the circumstances under which the policyholder may  
77 demand certain testing.

78 (5)(a) Subject to paragraph (b), if a sinkhole loss is  
79 verified, the insurer shall pay to stabilize the land and

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80 building and repair the foundation in accordance with the  
81 recommendations of the professional engineer as provided under  
82 s. 627.7073, and in consultation with the policyholder, subject  
83 to the coverage and terms of the policy. The insurer shall pay  
84 for other repairs to the structure and contents in accordance  
85 with the terms of the policy.

86 (b) The insurer may limit its payment to the actual cash  
87 value of the sinkhole loss, not including underpinning or  
88 grouting or any other repair technique performed below the  
89 existing foundation of the building, until the policyholder  
90 enters into a contract for the performance of building  
91 stabilization or foundation repairs. After the policyholder  
92 enters into the contract, the insurer shall pay the amounts  
93 necessary to begin and perform such repairs as the work is  
94 performed and the expenses are incurred. The insurer may not  
95 require the policyholder to advance payment for such repairs. If  
96 repair covered by a personal lines residential property  
97 insurance policy has begun and the professional engineer  
98 selected or approved by the insurer determines that the repair  
99 cannot be completed within the policy limits, the insurer must  
100 either complete the professional engineer's recommended repair  
101 or tender the policy limits to the policyholder without a  
102 reduction for the repair expenses incurred. Upon written  
103 approval of the policyholder obtained by the insurer after the  
104 completion of the stabilization and foundation repairs, the  
105 insurer may make payment directly to the persons selected by the  
106 policyholder to perform the land and building stabilization and  
107 foundation repairs. If the direct payment is made with the

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108 written approval of the policyholder obtained after the  
109 completion of the stabilization and repairs, the insurer has no  
110 liability for the work performed unless it agrees to such  
111 liability in writing. The insurer must make direct payment for  
112 stabilization and repairs, based upon the policyholder's written  
113 approval, within 30 days after repair completion, unless a  
114 contract between the policyholder and repair person specifies  
115 otherwise. However, an insurer may not be required to make such  
116 direct payment sooner than within 15 days after repair  
117 completion.

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

121 (7) If the insurer obtains, pursuant to s. 627.7073,  
122 written certification that there is no sinkhole loss or that the  
123 cause of the damage was not sinkhole activity, ~~and if the~~  
124 ~~policyholder has submitted the sinkhole claim without good faith~~  
125 ~~grounds for submitting such claim,~~ the policyholder shall  
126 reimburse the insurer for 50 percent of the actual costs of the  
127 analyses and services provided under ss. 627.7072(4) and  
128 627.7073; however, a policyholder is not required to reimburse  
129 an insurer more than \$1,000 ~~\$2,500~~ with respect to any claim. A  
130 policyholder is required to pay reimbursement under this  
131 subsection only if the insurer, prior to ordering the analysis  
132 under s. 627.7072, informs the policyholder in writing of the  
133 policyholder's potential liability for reimbursement and gives  
134 the policyholder the opportunity to withdraw the claim.

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

138           (10) The department shall maintain a list of approved  
139 professional engineers and professional geologists who are  
140 qualified to conduct testing as provided in s. 627.7072. When an  
141 insurer is required to engage a professional engineer or  
142 professional geologist under this section, the insurer shall  
143 contact the department's Division of Consumer Services to obtain  
144 the name of an approved individual or firm that the insurer may  
145 engage. The department may adopt rules to implement this  
146 subsection.

147           Section 3. Section 627.7071, Florida Statutes, is created  
148 to read:

149           627.7071 Legislative intent.--It is the intent of the  
150 Legislature that the following process be used when a sinkhole  
151 claim is filed:

152           (1) The insurer shall inspect the claim.

153           (2) If the insurer is unable to determine a valid cause of  
154 the damage or discovers damage to the structure consistent with  
155 a sinkhole loss or if demanded by the policyholder, the insurer  
156 shall engage in phase I testing, as set forth in s. 627.7072(3).

157           (3) If phase I testing is inconclusive as to the cause of  
158 the damage or if demanded by the policyholder, the insurer shall  
159 perform phase II testing, as set forth in s. 627.7072(4).

160           (4) If the policyholder and the insurer are unable to  
161 agree on the cause of the damage or other aspects of the

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162 sinkhole claim, the policyholder and the insurer may take part  
163 in neutral evaluation under s. 627.7074.

164 Section 4. Subsection (1) of section 627.7072, Florida  
165 Statutes, is amended, and subsections (3), (4), (5), and (6) are  
166 added to that section, to read:

167 627.7072 Testing standards for sinkholes.--

168 (1) The professional engineer and professional geologist  
169 shall perform such tests as sufficient, in their professional  
170 opinion, to determine the presence or absence of sinkhole loss  
171 or other cause of damage within reasonable professional  
172 probability and for the professional engineer to make  
173 recommendations regarding necessary building stabilization and  
174 foundation repair.

175 (3)(a) All of the following may be performed in the  
176 initial phase of testing, referred to as phase I testing, by or  
177 under the supervision of the professional engineer or  
178 professional geologist, as appropriate:

179 1. Identification and location of all reasonably  
180 observable damage.

181 2. A geophysical survey such as a ground-penetrating radar  
182 (GPR) test, an electrical resistivity test, or other appropriate  
183 geophysical method.

184 3. Hand auger boring and push penetrometer testing in two  
185 or more locations around the foundation of the structure to  
186 determine the composition and relative strength of the nearby  
187 surface soils. The hand auger boring must penetrate to 10 feet,  
188 and the push penetrometer must penetrate to at least 4 feet.  
189 Laboratory tests, including, but not limited to, moisture

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190 content, organic content for probable organic-rich soils, and  
191 Attenberg limits data for clays, must be conducted on any  
192 potentially deleterious soils obtained in the hand auger borings  
193 to document a proximal cause for damage.

194 4. The excavation of one or more test pits to determine to  
195 the extent possible the thickness, bearing depth, and type of  
196 foundation system used in the construction.

197 5. Preparation of a site map showing damage locations,  
198 documentation of representative damage through the use of  
199 photographs taken at the time of initial and subsequent site  
200 reconnaissance and field testing under this section, and a  
201 written description of the nature of each damage feature.

202 6. A floor slab elevation map.

203 (b) Phase I testing may include other tests the  
204 professional engineer and professional geologist deem to be  
205 practicable and appropriate to identify the cause of distress to  
206 the property, but may not include the type of tests included  
207 under phase II.

208 (4) (a) If testing performed under subsection (3) is  
209 inconclusive as to the determination of sinkhole loss or reveals  
210 damage other than that related to a sinkhole, in the opinion of  
211 either the professional engineer or professional geologist, or  
212 both, or if additional testing under this section is demanded by  
213 the policyholder in writing within 60 days after the receipt of  
214 the phase I testing results, the following additional tests,  
215 referred to as phase II testing, shall be performed by or under  
216 the supervision of the professional engineer or professional  
217 geologist:



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218       1. A floor elevation survey or study to determine any  
219 variances in the floor elevation.

220       2. At least two invasive penetration test borings,  
221 consisting of standard penetration tests, to determine the  
222 composition and properties of the subsurface geologic materials  
223 surrounding the structure. Cone penetrometer tests may be used  
224 to discover the relative consistency of subsurface conditions.

225       3. Laboratory analyses of representative samples of  
226 potentially problematic materials found within the upper 20 feet  
227 of soil to determine if these materials may have contributed to  
228 the damage.

229       (b) Phase II testing may include other tests the  
230 professional engineer and professional geologist deem to be  
231 appropriate.

232       (5) Upon conclusion of testing required by this section,  
233 the person conducting the tests must provide a written report to  
234 the insurer and policyholder. All relative testing data, logs,  
235 error reports, and similar information, regardless of whether  
236 the professional engineer or professional geologist finds the  
237 information to be relevant, shall be retained by the  
238 professional engineer or professional geologist for at least 2  
239 years from the date of the resolution of the claim.

240       (6) The Department of Environmental Protection may adopt  
241 rules to implement this section.

242       Section 5. Subsection (1) of section 627.7073, Florida  
243 Statutes, is amended to read:

244       627.7073 Sinkhole reports.--

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245 (1) Upon completion of testing as provided in s. 627.7072,  
246 the professional engineer and professional geologist shall issue  
247 a report and certification to the insurer and the policyholder  
248 as provided in this section.

249 (a) Sinkhole loss is verified if, based upon tests  
250 performed in accordance with s. 627.7072, a professional ~~an~~  
251 engineer and a professional geologist issue a written report and  
252 certification stating:

253 1. That the cause of the actual physical and structural  
254 damage is sinkhole activity within a reasonable professional  
255 probability.

256 2. That the analyses conducted were of sufficient scope to  
257 identify sinkhole activity as the cause of damage within a  
258 reasonable professional probability.

259 3. A description of the tests performed.

260 4. A recommendation by the professional engineer of  
261 methods for stabilizing the land and building and for making  
262 repairs to the foundation.

263 (b) If sinkhole activity is eliminated as the cause of  
264 damage to the structure, the professional engineer and  
265 professional geologist shall issue a written report and  
266 certification to the policyholder and the insurer stating:

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

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

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272 3. A statement of the cause of the damage within a  
273 reasonable professional probability.

274 4. A description of the tests performed.

275 (c) The respective findings, opinions, and recommendations  
276 of the professional engineer and professional geologist as to  
277 the cause of distress to the property verification or  
278 elimination of a sinkhole loss and the findings, opinions, and  
279 recommendations of the professional engineer as to land and  
280 building stabilization and foundation repair are conclusive,  
281 unless contrary findings and conclusions are proven by clear and  
282 convincing evidence shall be presumed correct.

283 Section 6. Section 627.7074, Florida Statutes, is created  
284 to read:

285 627.7074 Alternative procedure for resolution of disputed  
286 sinkhole insurance claims.--

287 (1) As used in this section:

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

290 (b) "Neutral evaluator" means an professional engineer or  
291 a professional geologist who has completed a course of study in  
292 alternative dispute resolution designed or approved by the  
293 department for use in the neutral evaluation process, who is  
294 determined to be fair and impartial, and who is attempting to  
295 resolve the dispute or claim under this section.

296 (c) "Department" means the Department of Financial  
297 Services.

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

300       (3) Following the receipt of the report provided under s.  
 301 627.7073 or the denial of a claim for a sinkhole loss, the  
 302 insurer shall notify the policyholder of his or her right to  
 303 participate in the neutral evaluation program under this  
 304 section. Neutral evaluation supersedes the alternative dispute  
 305 resolution process under s. 627.7015. The department shall  
 306 prepare a consumer information pamphlet for distribution by the  
 307 insurer to policyholders. The pamphlet shall clearly describe  
 308 the neutral evaluation process and include directions and forms  
 309 necessary for the policyholder to request a neutral evaluation.

310       (4) Neutral evaluation is optional and nonbinding. Either  
 311 the policyholder or the insurer may decline to participate. A  
 312 request for neutral evaluation shall be filed with the  
 313 department by the policyholder or the insurer on a form approved  
 314 by the department. The request for neutral evaluation must state  
 315 the reason for the request and must include an explanation of  
 316 all the issues in dispute at the time of the request. Filing a  
 317 request for neutral evaluation tolls the applicable time  
 318 requirements for filing suit for a period of 60 days following  
 319 the conclusion of the neutral evaluation process or the time  
 320 prescribed in s. 95.11, whichever is later.

321       (5) Neutral evaluation shall be conducted as an informal  
 322 process in which formal rules of evidence and procedure need not  
 323 be observed. A party to neutral evaluation is not required to  
 324 attend neutral evaluation if a representative of the party  
 325 attends and has the authority to make a binding decision on  
 326 behalf of the party. All parties shall participate in the  
 327 evaluation in good faith.

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328       (6) The insurer shall pay the costs associated with the  
329 neutral evaluation.

330       (7) Upon receipt of a request for neutral evaluation, the  
331 department shall refer the request to a neutral evaluator. The  
332 neutral evaluator shall notify the policyholder and the insurer  
333 of the date, time, and place of the neutral evaluation  
334 conference. The conference may be held by telephone, if feasible  
335 and desirable. The neutral evaluation conference shall be held  
336 within 45 days after receipt of the request by the department.

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

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

344       (10) Disclosures and information divulged in the neutral  
345 evaluation process are not admissible in any subsequent action  
346 or proceeding relating to the claim or to the cause of action  
347 giving rise to the claim, except as provided in subsection (13).

348       (11) Any court proceeding related to the subject matter of  
349 the neutral evaluation shall be stayed pending completion of the  
350 neutral evaluation.

351       (12) For matters that are not resolved by the parties at  
352 the conclusion of the neutral evaluation, the neutral evaluator  
353 shall prepare a report stating that in his or her opinion the  
354 sinkhole loss has been verified or eliminated and, if verified,  
355 the need for and estimated costs of stabilizing the land and any

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356 covered structures or buildings and other appropriate  
357 remediation or structural repairs. The evaluator's report shall  
358 be sent to all parties in attendance at the neutral evaluation  
359 and to the department.

360 (13) The recommendation of the neutral evaluator is not  
361 binding on any party and the parties retain access to courts.  
362 The neutral evaluator's written recommendation is admissible in  
363 any subsequent action or proceeding relating to the claim or to  
364 the cause of action giving rise to the claim only for purposes  
365 of determining the award of attorney's fees.

366 (14) If the policyholder declines to participate in  
367 neutral evaluation requested by the insurer or declines to  
368 resolve the matter in accordance with the recommendation of the  
369 neutral evaluator pursuant to this section, the insurer shall  
370 not be liable for attorney's fees under s. 627.428 or other  
371 provisions of the insurance code or for extra contractual  
372 damages related to a claim for a sinkhole loss.

373 (15) A party may seek judicial review of the  
374 recommendation of the neutral evaluator to determine whether the  
375 recommendation is reasonable. A recommendation is reasonable  
376 unless it was procured by corruption, fraud, or other undue  
377 means; there was evident partiality by the neutral evaluator or  
378 misconduct prejudicing the rights of any party; or the neutral  
379 evaluator exceeded the authority and power granted by this  
380 subsection. If the court declares the recommendation is not  
381 reasonable, the neutral evaluation recommendation shall be  
382 vacated.

383 Section 7. This act shall take effect July 1, 2006.