

CHAMBER ACTION

1 The State Administration Appropriations Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to sinkhole insurance; providing a short
8 title; amending s. 627.706, F.S.; authorizing the
9 inclusion of specified deductibles for sinkhole losses in
10 residential property insurance policies; amending s.
11 627.707, F.S.; revising references to certain engineers;
12 excluding certain policies from payment provisions for
13 certain repairs; authorizing insurers to make direct
14 payment for certain repairs; excluding insurers from
15 liability for repairs under certain circumstances;
16 creating s. 627.7071, F.S.; providing legislative intent
17 for the process of filing sinkhole claims; amending s.
18 627.7072, F.S.; requiring a report upon conclusion of
19 testing; amending s. 627.7073, F.S.; revising a
20 presumption relating to the findings, opinions, and
21 recommendations in sinkhole reports; creating s. 627.7074,
22 F.S.; providing for an alternative procedure for the
23 resolution of disputed sinkhole insurance claims which is

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24 optional, nonbinding, and informal; providing definitions;
 25 requiring the Department of Financial Services to certify
 26 and maintain a list of neutral evaluators, prepare a
 27 consumer information pamphlet explaining the alternative
 28 procedure, and adopt rules for the implementation of an
 29 alternative procedure; providing for payment of costs and
 30 attorney's fees; preserving access to courts and
 31 authorizing judicial review of neutral evaluation
 32 recommendations; requiring the Office of Insurance
 33 Regulation to calculate a certain presumed factor on
 34 residential property insurance rates; providing
 35 requirements and procedures for determining such
 36 calculation; requiring the office to provide notice of
 37 such rate factor to insurers; requiring insurers to
 38 include such rate factor in certain rate filings;
 39 providing appropriations and authorizing additional
 40 positions and salary rates; providing an effective date.

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

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

46 Section 2. Section 627.706, Florida Statutes, is amended
 47 to read:

48 627.706 Sinkhole insurance; definitions.--

49 (1) Every insurer authorized to transact property
 50 insurance in this state shall make available coverage for
 51 insurable sinkhole losses on any structure, including contents

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52 | of personal property contained therein, to the extent provided
53 | in the form to which the sinkhole coverage attaches.

54 | (2) A policy for residential property insurance shall
55 | include a deductible applicable to sinkhole losses no lower than
56 | 1 percent of the policy dwelling limits. The policy shall offer
57 | additional deductibles applicable to sinkhole losses of 2
58 | percent, 5 percent, and 10 percent, with premium discounts
59 | offered with each deductible amount.

60 | (3)~~(2)~~ As used in ss. 627.706-627.7074, and as used in
61 | connection with any policy providing coverage for sinkhole
62 | losses:

63 | (a) "Sinkhole" means a landform created by subsidence of
64 | soil, sediment, or rock as underlying strata are dissolved by
65 | groundwater. A sinkhole may form by collapse into subterranean
66 | voids created by dissolution of limestone or dolostone or by
67 | subsidence as these strata are dissolved.

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

72 | (c) "Sinkhole activity" means settlement or systematic
73 | weakening of the earth supporting such property only when such
74 | settlement or systematic weakening results from movement or
75 | raveling of soils, sediments, or rock materials into
76 | subterranean voids created by the effect of water on a limestone
77 | or similar rock formation.

78 | (d) "Engineer" means a person, as defined in s. 471.005,
79 | who has a bachelor's degree or higher in engineering with a

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80 specialty in the geotechnical engineering field. An engineer
81 must have geotechnical experience and expertise in the
82 identification of sinkhole activity as well as other potential
83 causes of damage to the structure.

84 (e) "Professional geologist" means a person, as defined by
85 s. 492.102, who has a bachelor's degree or higher in geology or
86 related earth science with expertise in the geology of Florida.
87 A professional geologist must have geological experience and
88 expertise in the identification of sinkhole activity as well as
89 other potential geologic causes of damage to the structure.

90 ~~(4)(3)~~ Every insurer authorized to transact property
91 insurance in this state shall make a proper filing with the
92 office for the purpose of extending the appropriate forms of
93 property insurance to include coverage for sinkhole losses.

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

96 627.707 Standards for investigation of sinkhole claims by
97 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
98 loss, an insurer must meet the following standards in
99 investigating a claim:

100 (2) Following the insurer's initial inspection, the
101 insurer shall engage a professional ~~an~~ engineer or a
102 professional geologist to conduct testing as provided in s.
103 627.7072 to determine the cause of the loss within a reasonable
104 professional probability and issue a report as provided in s.
105 627.7073, if:

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106 (a) The insurer is unable to identify a valid cause of the
107 damage or discovers damage to the structure which is consistent
108 with sinkhole loss; or

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

111 (3) Following the initial inspection of the insured
112 premises, the insurer shall provide written notice to the
113 policyholder disclosing the following information:

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

116 (b) A statement of the circumstances under which the
117 insurer is required to engage a professional ~~an~~ engineer or a
118 professional geologist to verify or eliminate sinkhole loss and
119 to engage a professional ~~an~~ engineer to make recommendations
120 regarding land and building stabilization and foundation repair.

121 (c) A statement regarding the right of the policyholder to
122 request testing by a professional ~~an~~ engineer or a professional
123 geologist and the circumstances under which the policyholder may
124 demand certain testing.

125 (5)(a) Subject to paragraph (b), if a sinkhole loss is
126 verified, the insurer shall pay to stabilize the land and
127 building and repair the foundation in accordance with the
128 recommendations of the professional engineer as provided under
129 s. 627.7073, and in consultation with the policyholder, subject
130 to the coverage and terms of the policy. The insurer shall pay
131 for other repairs to the structure and contents in accordance
132 with the terms of the policy.

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133 (b) The insurer may limit its payment to the actual cash
134 value of the sinkhole loss, not including underpinning or
135 grouting or any other repair technique performed below the
136 existing foundation of the building, until the policyholder
137 enters into a contract for the performance of building
138 stabilization or foundation repairs. After the policyholder
139 enters into the contract, the insurer shall pay the amounts
140 necessary to begin and perform such repairs as the work is
141 performed and the expenses are incurred. The insurer may not
142 require the policyholder to advance payment for such repairs. If
143 repair has begun and the professional engineer selected or
144 approved by the insurer determines that the repair cannot be
145 completed within the policy limits, the insurer must either
146 complete the professional engineer's recommended repair or
147 tender the policy limits to the policyholder without a reduction
148 for the repair expenses incurred. The provisions of this
149 subsection do not apply when two or more buildings, structures,
150 mobile homes, or manufactured buildings are insured under a
151 blanket policy for a single amount of insurance.

152 (c) Upon the insurer's obtaining the written approval of
153 the policyholder and any lienholder, the insurer may make
154 payment directly to the persons selected by the policyholder to
155 perform the land and building stabilization and foundation
156 repairs. The decision by the insurer to make direct payment to
157 such persons does not hold the insurer liable for the work
158 performed.

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

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

165 Section 4. Section 627.7071, Florida Statutes, is created
166 to read:

167 627.7071 Legislative intent.--It is the intent of the
168 Legislature that the following process be used when a sinkhole
169 claim is filed:

170 (1) The insurer shall inspect the claim.

171 (2) If the insurer is unable to determine a valid cause of
172 the damage or discovers damage to the structure consistent with
173 a sinkhole loss or if demanded by the policyholder, the insurer
174 shall engage in testing, as set forth in s. 627.7072.

175 (3) If the policyholder and the insurer are unable to
176 agree on the cause of the damage or other aspects of the
177 sinkhole claim, the policyholder and the insurer may take part
178 in neutral evaluation under s. 627.7074.

179 Section 5. Subsections (1) and (2) of section 627.7072,
180 Florida Statutes, are amended to read:

181 627.7072 Testing standards for sinkholes.--

182 (1) The professional engineer and professional geologist
183 shall perform such tests as sufficient, in their professional
184 opinion, to determine the presence or absence of sinkhole loss
185 or other cause of damage within reasonable professional
186 probability and for the professional engineer to make

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187 | recommendations regarding necessary building stabilization and
188 | foundation repair.

189 | (2) Upon conclusion of testing required by this section,
190 | the person conducting the tests must provide a written report to
191 | the insurer and policyholder ~~Testing by a professional geologist~~
192 | ~~shall be conducted in compliance with the Florida Geological~~
193 | ~~Survey Special Publication No. 57 (2005).~~

194 | Section 6. Subsection (1) of section 627.7073, Florida
195 | Statutes, is amended to read:

196 | 627.7073 Sinkhole reports.--

197 | (1) Upon completion of testing as provided in s. 627.7072,
198 | the professional engineer or ~~and~~ professional geologist shall
199 | issue a report and certification to the insurer and the
200 | policyholder as provided in this section.

201 | (a) Sinkhole loss is verified if, based upon tests
202 | performed in accordance with s. 627.7072, a professional ~~an~~
203 | engineer or ~~and~~ a professional geologist issue a written report
204 | and certification stating:

205 | 1. That the cause of the actual physical and structural
206 | damage is sinkhole activity within a reasonable professional
207 | probability.

208 | 2. That the analyses conducted were of sufficient scope to
209 | identify sinkhole activity as the cause of damage within a
210 | reasonable professional probability.

211 | 3. A description of the tests performed.

212 | 4. A recommendation by the professional engineer of
213 | methods for stabilizing the land and building and for making
214 | repairs to the foundation.

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215 (b) If sinkhole activity is eliminated as the cause of
216 damage to the structure, the professional engineer or ~~and~~
217 professional geologist shall issue a written report and
218 certification to the policyholder and the insurer stating:

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

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

224 3. A statement of the cause of the damage within a
225 reasonable professional probability.

226 4. A description of the tests performed.

227 (c) The respective findings, opinions, and recommendations
228 of the professional engineer or ~~and~~ professional geologist as to
229 the cause of distress to the property ~~verification or~~
230 ~~elimination of a sinkhole loss~~ and the findings, opinions, and
231 recommendations of the professional engineer as to land and
232 building stabilization and foundation repair are conclusive,
233 unless contrary findings and conclusions are proven by
234 preponderance of evidence ~~shall be presumed correct.~~

235 Section 7. Section 627.7074, Florida Statutes, is created
236 to read:

237 627.7074 Alternative procedure for resolution of disputed
238 sinkhole insurance claims.--

239 (1) As used in this section:

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

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

248 (c) "Department" means the Department of Financial
249 Services.

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

252 (3) Following the receipt of the report provided under s.
253 627.7073 or the denial of a claim for a sinkhole loss, the
254 insurer shall notify the policyholder of his or her right to
255 participate in the neutral evaluation program under this
256 section. Neutral evaluation supersedes the alternative dispute
257 resolution process under s. 627.7015. The department shall
258 prepare a consumer information pamphlet for distribution by the
259 insurer to policyholders. The pamphlet shall clearly describe
260 the neutral evaluation process and include directions and forms
261 necessary for the policyholder to request a neutral evaluation.

262 (4) Neutral evaluation is optional and nonbinding. Either
263 the policyholder or the insurer may decline to participate. A
264 request for neutral evaluation shall be filed with the
265 department by the policyholder or the insurer on a form approved
266 by the department. The request for neutral evaluation must state
267 the reason for the request and must include an explanation of
268 all the issues in dispute at the time of the request. Filing a
269 request for neutral evaluation tolls the applicable time

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270 requirements for filing suit for a period of 60 days following
271 the conclusion of the neutral evaluation process or the time
272 prescribed in s. 95.11, whichever is later.

273 (5) Neutral evaluation shall be conducted as an informal
274 process in which formal rules of evidence and procedure need not
275 be observed. A party to neutral evaluation is not required to
276 attend, provided a representative of the party attends and has
277 the authority to settle the claim on behalf of the party. All
278 parties shall participate in the evaluation in good faith.

279 (6) The insurer shall pay the costs associated with the
280 neutral evaluation.

281 (7) Upon receipt of a request for neutral evaluation, the
282 department shall refer the request to a neutral evaluator. The
283 neutral evaluator shall notify the policyholder and the insurer
284 of the date, time, and place of the neutral evaluation
285 conference. The conference may be held by telephone, if feasible
286 and desirable. The neutral evaluation conference shall be held
287 within 45 days after receipt of the request by the department.

288 (8) The department shall adopt rules of procedure for the
289 neutral evaluation process and, through materials produced,
290 clarify the role of the consumer affairs specialist as a
291 nonattorney.

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

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297 (10) Evidence of an offer to settle a claim during the
298 neutral evaluation process, as well as any relevant conduct or
299 statements made in negotiations concerning the offer to settle a
300 claim, is inadmissible to prove liability or absence of
301 liability for the claim or its value, except as provided in
302 subsection (13).

303 (11) Any court proceeding related to the subject matter of
304 the neutral evaluation shall be stayed pending completion of the
305 neutral evaluation.

306 (12) For matters that are not resolved by the parties at
307 the conclusion of the neutral evaluation, the neutral evaluator
308 shall prepare a report stating that in his or her opinion the
309 sinkhole loss has been verified or eliminated and, if verified,
310 the need for and estimated costs of stabilizing the land and any
311 covered structures or buildings and other appropriate
312 remediation or structural repairs. The evaluator's report shall
313 be sent to all parties in attendance at the neutral evaluation
314 and to the department.

315 (13) The recommendation of the neutral evaluator is not
316 binding on any party and the parties retain access to courts.
317 The neutral evaluator's written recommendation is admissible in
318 any subsequent action or proceeding relating to the claim or to
319 the cause of action giving rise to the claim only for purposes
320 of determining the award of attorney's fees.

321 (14) If the policyholder declines to participate in
322 neutral evaluation requested by the insurer or declines to
323 resolve the matter in accordance with the recommendation of the
324 neutral evaluator pursuant to this section, the insurer shall

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325 not be liable for attorney's fees under s. 627.428 or other
326 provisions of the insurance code or for extra contractual
327 damages related to a claim for a sinkhole loss.

328 (15) A party may seek judicial review of the
329 recommendation of the neutral evaluator to determine whether the
330 recommendation is reasonable. A recommendation is reasonable
331 unless it was procured by corruption, fraud, or other undue
332 means; there was evident partiality by the neutral evaluator or
333 misconduct prejudicing the rights of any party; or the neutral
334 evaluator exceeded the authority and power granted by this
335 subsection. If the court declares the recommendation is not
336 reasonable, the neutral evaluation recommendation shall be
337 vacated.

338 Section 8. (1) By February 1, 2007, the Office of
339 Insurance Regulation shall calculate a presumed factor to
340 reflect the impact of the changes made in this act to rates
341 filed by residential property insurers providing sinkhole loss
342 coverage. The office shall issue a notice informing all insurers
343 writing residential property insurance coverage of the presumed
344 factor.

345 (2) In determining the presumed factor, the office shall
346 use generally accepted actuarial techniques and standards in
347 determining the expected impact on losses, expenses, and
348 investment income of the insurer.

349 (3) The office may contract with an appropriate vendor to
350 determine the presumed factor.

351 (4) Each residential property insurer shall, at its next
352 annual rate filing after May 1, 2007, reflect an overall rate

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353 | reduction at least as great as the presumed factor determined
354 | under subsection (1).

355 | (5) The sum of \$250,000 in nonrecurring funds is
356 | appropriated from the Insurance Regulatory Trust Fund in the
357 | Department of Financial Services to the Office of Insurance
358 | Regulation for the 2006-2007 fiscal year for the purposes of
359 | funding the provisions of this section.

360 | Section 9. The sums of \$115,322 in recurring funds and
361 | \$10,486 in nonrecurring funds are appropriated from the
362 | Insurance Regulatory Trust Fund in the Department of Financial
363 | Services for the 2006-2007 fiscal year for the purposes of
364 | funding the provisions of this act, and two full-time equivalent
365 | positions with 59,435 in associated salary rate are authorized.

366 | Section 10. This act shall take effect July 1, 2006.