

## CHAMBER ACTION

---

1 The Commerce Council recommends the following:

2 **Council/Committee Substitute**

3 Remove the entire bill and insert:

4 A bill to be entitled

5 An act relating to sinkhole insurance; amending s.  
6 627.706, F.S.; allowing a deductible amount applicable to  
7 sinkhole losses in a policy for residential property  
8 insurance; defining the term "professional engineer";  
9 amending s. 627.707, F.S.; revising references to certain  
10 engineers; authorizing insurers to make direct payment for  
11 certain repairs; excluding insurers from liability for  
12 repairs under certain circumstances; amending s. 627.7072,  
13 F.S.; revising references to certain engineers;  
14 eliminating the requirement for certain testing  
15 compliance; amending s. 627.7073, F.S.; revising  
16 requirements for sinkhole reports by professional  
17 engineers and professional geologists; providing for the  
18 recording of sinkhole reports by the clerk of court rather  
19 than the property appraiser; creating s. 627.7074, F.S.;  
20 prescribing an alternative method for resolving disputed  
21 sinkhole insurance claims; providing definitions;  
22 prescribing procedures for invoking the alternative  
23 method; providing that a recommendation by a neutral

HB 217 CS

2006  
CS

24 evaluator is not binding on any party; providing for  
 25 payments of costs; requiring the insurer to pay attorney's  
 26 fees of the policyholder up to a specified amount under  
 27 certain conditions; providing that an insurer is not  
 28 liable for attorney's fees or for certain damages under  
 29 certain conditions; providing for judicial review;  
 30 amending s. 877.02, F.S.; prohibiting certain  
 31 solicitations by contractors and other persons providing  
 32 sinkhole remediation services; providing penalties;  
 33 providing effective dates.

34  
 35 Be It Enacted by the Legislature of the State of Florida:

36  
 37 Section 1. Subsection (1) and paragraph (d) of subsection  
 38 (2) of section 627.706, Florida Statutes, are amended to read:

39 627.706 Sinkhole insurance; definitions.--

40 (1) Every insurer authorized to transact property  
 41 insurance in this state shall make available coverage for  
 42 insurable sinkhole losses on any structure, including contents  
 43 of personal property contained therein, to the extent provided  
 44 in the form to which the sinkhole coverage attaches. A policy  
 45 for residential property insurance may include a deductible  
 46 amount applicable to sinkhole losses equal to 1 percent, 2  
 47 percent, 5 percent, or 10 percent of the policy dwelling limits,  
 48 with appropriate premium discounts offered with each deductible  
 49 amount.

HB 217 CS

2006  
CS

50 (2) As used in ss. 627.706-627.7074, and as used in  
51 connection with any policy providing coverage for sinkhole  
52 losses:

53 (d) "Professional engineer" means a person, as defined in  
54 s. 471.005, who has a bachelor's degree or higher in engineering  
55 with a specialty in the geotechnical engineering field. A  
56 professional ~~An~~ engineer must have geotechnical experience and  
57 expertise in the identification of sinkhole activity as well as  
58 other potential causes of damage to the structure.

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

61 627.707 Standards for investigation of sinkhole claims by  
62 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole  
63 loss, an insurer must meet the following standards in  
64 investigating a claim:

65 (2) Following the insurer's initial inspection, the  
66 insurer shall engage a professional ~~an~~ engineer or a  
67 professional geologist to conduct testing as provided in s.  
68 627.7072 to determine the cause of the loss within a reasonable  
69 professional probability and issue a report as provided in s.  
70 627.7073, if:

71 (a) The insurer is unable to identify a valid cause of the  
72 damage or discovers damage to the structure which is consistent  
73 with sinkhole loss; or

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

HB 217 CS

2006  
CS

76 (3) Following the initial inspection of the insured  
77 premises, the insurer shall provide written notice to the  
78 policyholder disclosing the following information:

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

81 (b) A statement of the circumstances under which the  
82 insurer is required to engage a professional ~~an~~ engineer or a  
83 professional geologist to verify or eliminate sinkhole loss and  
84 to engage a professional ~~an~~ engineer to make recommendations  
85 regarding land and building stabilization and foundation repair.

86 (c) A statement regarding the right of the policyholder to  
87 request testing by a professional ~~an~~ engineer or a professional  
88 geologist and the circumstances under which the policyholder may  
89 demand certain testing.

90 (5)(a) Subject to paragraph (b), if a sinkhole loss is  
91 verified, the insurer shall pay to stabilize the land and  
92 building and repair the foundation in accordance with the  
93 recommendations of the professional engineer as provided under  
94 s. 627.7073, and in consultation with the policyholder, subject  
95 to the coverage and terms of the policy. The insurer shall pay  
96 for other repairs to the structure and contents in accordance  
97 with the terms of the policy.

98 (b) The insurer may limit its payment to the actual cash  
99 value of the sinkhole loss, not including underpinning or  
100 grouting or any other repair technique performed below the  
101 existing foundation of the building, until the policyholder  
102 enters into a contract for the performance of building  
103 stabilization or foundation repairs. After the policyholder

HB 217 CS

2006  
CS

104 enters into the contract, the insurer shall pay the amounts  
105 necessary to begin and perform such repairs as the work is  
106 performed and the expenses are incurred. The insurer may not  
107 require the policyholder to advance payment for such repairs. If  
108 repair covered by a personal lines residential property  
109 insurance policy has begun and the professional engineer  
110 selected or approved by the insurer determines that the repair  
111 cannot be completed within the policy limits, the insurer must  
112 either complete the professional engineer's recommended repair  
113 or tender the policy limits to the policyholder without a  
114 reduction for the repair expenses incurred.

115 (c) Upon the insurer's obtaining the written approval of  
116 the policyholder and any lienholder, the insurer may make  
117 payment directly to the persons selected by the policyholder to  
118 perform the land and building stabilization and foundation  
119 repairs. The decision by the insurer to make payment to such  
120 persons does not hold the insurer liable for the work performed.

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

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

127 Section 3. Section 627.7072, Florida Statutes, is amended  
128 to read:

129 627.7072 Testing standards for sinkholes.--

130 (1) The professional engineer or ~~and~~ professional  
131 geologist shall perform such tests as sufficient, in their

HB 217 CS

2006  
CS

132 professional opinion, to determine the presence or absence of  
 133 sinkhole loss or other cause of damage within reasonable  
 134 professional probability and for the professional engineer to  
 135 make recommendations regarding necessary building stabilization  
 136 and foundation repair.

137 ~~(2) Testing by a professional geologist shall be conducted~~  
 138 ~~in compliance with the Florida Geological Survey Special~~  
 139 ~~Publication No. 57 (2005).~~

140 Section 4. Subsections (1) and (2) of section 627.7073,  
 141 Florida Statutes, are amended to read:

142 627.7073 Sinkhole reports.--

143 (1) Upon completion of testing as provided in s. 627.7072,  
 144 the professional engineer or ~~and~~ professional geologist shall  
 145 issue a report and certification to the insurer and the  
 146 policyholder as provided in this section.

147 (a) Sinkhole loss is verified if, based upon tests  
 148 performed in accordance with s. 627.7072, a professional ~~an~~  
 149 engineer or ~~and~~ a professional geologist issue a written report  
 150 and certification stating:

151 1. That the cause of the actual physical and structural  
 152 damage is sinkhole activity within a reasonable professional  
 153 probability.

154 2. That the analyses conducted were of sufficient scope to  
 155 identify sinkhole activity as the cause of damage within a  
 156 reasonable professional probability.

157 3. A description of the tests performed.

158 4. A recommendation by the professional engineer of  
 159 methods for stabilizing the land and building and for making  
 160 repairs to the foundation.

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

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

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

170 3. A statement of the cause of the damage within a  
 171 reasonable professional probability.

172 4. A description of the tests performed.

173 (c) The respective findings, opinions, and recommendations  
 174 of the professional engineer or ~~and~~ professional geologist as to  
 175 the cause of distress to the property ~~verification or~~  
 176 ~~elimination of a sinkhole loss~~ and the findings, opinions, and  
 177 recommendations of the professional engineer as to land and  
 178 building stabilization and foundation repair shall be presumed  
 179 correct.

180 (2) Any insurer that has paid a claim for a sinkhole loss  
 181 shall file a copy of the report and certification, prepared  
 182 pursuant to subsection (1), with the county clerk of court  
 183 ~~property appraiser~~, who shall record the report and  
 184 certification with the parcel number. The insurer shall bear the  
 185 cost of filing and recording the report and certification. There

HB 217 CS

2006  
CS

186 shall be no cause of action or liability against an insurer for  
 187 compliance with this section. The seller of real property upon  
 188 which a sinkhole claim has been made shall disclose to the buyer  
 189 of such property that a claim has been paid and whether or not  
 190 the full amount of the proceeds were used to repair the sinkhole  
 191 damage.

192 Section 5. Effective October 1, 2006, section 627.7074,  
 193 Florida Statutes, is created to read:

194 627.7074 Alternative procedure for resolution of disputed  
 195 sinkhole insurance claims.--

196 (1) As used in this section, the term:

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

199 (b) "Neutral evaluator" means a professional engineer or a  
 200 professional geologist who has completed a course of study in  
 201 alternative dispute resolution designed or approved by the  
 202 department for use in the neutral evaluation process, who is  
 203 determined to be fair and impartial.

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

206 (b) The department shall prepare a consumer information  
 207 pamphlet for distribution by insurers to policyholders which  
 208 clearly describes the neutral evaluation process and includes  
 209 information and forms necessary for the policyholder to request  
 210 a neutral evaluation.

211 (3) Following the receipt of the report provided under s.  
 212 627.7073 or the denial of a claim for a sinkhole loss, the  
 213 insurer shall notify the policyholder of his or her right to



HB 217 CS

2006  
CS

214 participate in the neutral evaluation program under this  
215 section. Neutral evaluation supersedes the alternative dispute  
216 resolution process under s. 627.7015. The insurer shall provide  
217 to the policyholder the consumer information pamphlet prepared  
218 by the department pursuant to paragraph (2)(b).

219 (4) Neutral evaluation is optional and nonbinding. Either  
220 the policyholder or the insurer may decline to participate. A  
221 request for neutral evaluation may be filed with the department  
222 by the policyholder or the insurer on a form approved by the  
223 department. The request for neutral evaluation must state the  
224 reason for the request and must include an explanation of all  
225 the issues in dispute at the time of the request. Filing a  
226 request for neutral evaluation tolls the applicable time  
227 requirements for filing suit for a period of 60 days following  
228 the conclusion of the neutral evaluation process or the time  
229 prescribed in s. 95.11, whichever is later.

230 (5) Neutral evaluation shall be conducted as an informal  
231 process in which formal rules of evidence and procedure need not  
232 be observed. A party to neutral evaluation is not required to  
233 attend neutral evaluation if a representative of the party  
234 attends and has the authority to make a binding decision on  
235 behalf of the party. All parties shall participate in the  
236 evaluation in good faith.

237 (6) The insurer shall pay the costs associated with the  
238 neutral evaluation.

239 (7) Upon receipt of a request for neutral evaluation, the  
240 department shall refer the request to a neutral evaluator. The  
241 neutral evaluator shall notify the policyholder and the insurer

HB 217 CS

2006  
CS

242 of the date, time, and place of the neutral evaluation  
243 conference. The conference may be held by telephone, if feasible  
244 and desirable. The neutral evaluation conference shall be held  
245 within 45 days after receipt of the request by the department.

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

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

253 (10) Evidence of an offer to settle a claim during the  
254 neutral evaluation process, as well as any relevant conduct or  
255 statements made in negotiations concerning the offer to settle a  
256 claim, is inadmissible to prove liability or absence of  
257 liability for the claim or its value, except as provided in  
258 subsection (13).

259 (11) Any court proceeding related to the subject matter of  
260 the neutral evaluation shall be stayed pending completion of the  
261 neutral evaluation.

262 (12) For matters that are not resolved by the parties at  
263 the conclusion of the neutral evaluation, the neutral evaluator  
264 shall prepare a report stating that in his or her opinion the  
265 sinkhole loss has been verified or eliminated and, if verified,  
266 the need for and estimated costs of stabilizing the land and any  
267 covered structures or buildings and other appropriate  
268 remediation or structural repairs. The evaluator's report shall

HB 217 CS

2006  
CS

269 be sent to all parties in attendance at the neutral evaluation  
270 and to the department.

271 (13) The recommendation of the neutral evaluator is not  
272 binding on any party, and the parties retain access to courts.  
273 The neutral evaluator's written recommendation is admissible in  
274 any subsequent action or proceeding relating to the claim or to  
275 the cause of action giving rise to the claim only for purposes  
276 of determining the award of attorney's fees.

277 (14) If the neutral evaluator first verifies the existence  
278 of a sinkhole and, second, recommends the need for and estimates  
279 costs of stabilizing the land and any covered structures or  
280 buildings and other appropriate remediation or structural  
281 repairs, which costs exceed the amount that the insurer has  
282 offered to pay the policyholder, the insurer is liable to the  
283 policyholder for up to \$2,500 in attorney's fees for the  
284 attorney's participation in the neutral evaluation process. For  
285 purposes of this subsection, the term "offer to pay" means a  
286 written offer signed by the insurer or its legal representative  
287 and delivered to the policyholder within 10 days after the  
288 insurer receives notice that a request for neutral evaluation  
289 has been made under this section.

290 (15) If the policyholder declines to participate in  
291 neutral evaluation requested by the insurer or declines to  
292 resolve the matter in accordance with the recommendation of the  
293 neutral evaluator pursuant to this section, the insurer is not  
294 liable for attorney's fees under s. 627.428 or other provisions  
295 of the insurance code or for extra-contractual damages related  
296 to a claim for a sinkhole loss.

HB 217 CS

2006  
CS

297           (16) A party may seek judicial review of the  
 298 recommendation of the neutral evaluator to determine whether the  
 299 recommendation is reasonable. A recommendation is reasonable  
 300 unless: it was procured by corruption, fraud, or other undue  
 301 means; there was evident partiality by the neutral evaluator or  
 302 misconduct prejudicing the rights of any party; or the neutral  
 303 evaluator exceeded the authority and power granted by this  
 304 section. If the court declares the recommendation is not  
 305 reasonable, the neutral evaluation recommendation shall be  
 306 vacated.

307           Section 6. Subsection (2) of section 877.02, Florida  
 308 Statutes, is amended to read:

309           877.02 Solicitation of legal services or retainers  
 310 therefor; penalty.--

311           (2) It shall be unlawful for any person in the employ of  
 312 or in any capacity attached to any hospital, sanitarium, police  
 313 department, wrecker service or garage, prison or court, ~~or~~ for a  
 314 person authorized to furnish bail bonds, investigators,  
 315 photographers, insurance or public adjusters, or for a general  
 316 or other contractor as defined in s. 489.105 or other business  
 317 providing sinkhole remediation services, to communicate directly  
 318 or indirectly with any attorney or person acting on said  
 319 attorney's behalf for the purpose of aiding, assisting or  
 320 abetting such attorney in the solicitation of legal business or  
 321 the procurement through solicitation of a retainer, written or  
 322 oral, or any agreement authorizing the attorney to perform or  
 323 render legal services.

HB 217 CS

2006  
CS

324           Section 7. Except as otherwise expressly provided in this  
325 act, this act shall take effect July 1, 2006.