

1 A bill to be entitled
2 An act relating to sinkhole insurance; amending s.
3 627.706, F.S.; allowing a deductible amount applicable to
4 sinkhole losses in a policy for residential property
5 insurance; defining the term "professional engineer";
6 amending s. 627.707, F.S.; revising references to certain
7 engineers; authorizing insurers to make direct payment for
8 certain repairs; excluding insurers from liability for
9 repairs under certain circumstances; amending s. 627.7072,
10 F.S.; revising references to certain engineers;
11 eliminating the requirement for certain testing
12 compliance; amending s. 627.7073, F.S.; revising
13 requirements for sinkhole reports by professional
14 engineers and professional geologists; providing for the
15 recording of sinkhole reports by the clerk of court rather
16 than the property appraiser; creating s. 627.7074, F.S.;
17 prescribing an alternative method for resolving disputed
18 sinkhole insurance claims; providing definitions;
19 prescribing procedures for invoking the alternative
20 method; providing that a recommendation by a neutral
21 evaluator is not binding on any party; providing for
22 payments of costs; requiring the insurer to pay attorney's
23 fees of the policyholder up to a specified amount under
24 certain conditions; providing that an insurer is not
25 liable for attorney's fees or for certain damages under
26 certain conditions; amending s. 877.02, F.S.; prohibiting
27 certain solicitations by contractors and other persons

28 providing sinkhole remediation services; providing
 29 penalties; requiring the Office of Insurance Regulation to
 30 calculate a certain presumed factor on residential
 31 property insurance rates; providing requirements and
 32 procedures for determining such calculation; requiring the
 33 office to provide notice of such rate factor to insurers;
 34 requiring insurers to include such rate factor in certain
 35 rate filings; providing appropriations and authorizing
 36 additional positions and salary rates; providing effective
 37 dates.

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 39 Be It Enacted by the Legislature of the State of Florida:

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 41 Section 1. Subsection (1) and paragraph (d) of subsection
 42 (2) of section 627.706, Florida Statutes, are amended to read:
 43 627.706 Sinkhole insurance; definitions.--

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

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

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

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

65 627.707 Standards for investigation of sinkhole claims by
 66 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
 67 loss, an insurer must meet the following standards in
 68 investigating a claim:

69 (2) Following the insurer's initial inspection, the
 70 insurer shall engage a professional ~~an~~ engineer or a
 71 professional geologist to conduct testing as provided in s.
 72 627.7072 to determine the cause of the loss within a reasonable
 73 professional probability and issue a report as provided in s.
 74 627.7073, if:

75 (a) The insurer is unable to identify a valid cause of the
 76 damage or discovers damage to the structure which is consistent
 77 with sinkhole loss; or

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

80 (3) Following the initial inspection of the insured
81 premises, the insurer shall provide written notice to the
82 policyholder disclosing the following information:

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

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

90 (c) A statement regarding the right of the policyholder to
91 request testing by a professional ~~an~~ engineer or a professional
92 geologist and the circumstances under which the policyholder may
93 demand certain testing.

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

102 (b) The insurer may limit its payment to the actual cash
103 value of the sinkhole loss, not including underpinning or
104 grouting or any other repair technique performed below the
105 existing foundation of the building, until the policyholder
106 enters into a contract for the performance of building

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

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

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

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

131 Section 3. Section 627.7072, Florida Statutes, is amended
132 to read:

133 627.7072 Testing standards for sinkholes.--

134 (1) The professional engineer or ~~and~~ professional
135 geologist shall perform such tests as sufficient, in their
136 professional opinion, to determine the presence or absence of
137 sinkhole loss or other cause of damage within reasonable
138 professional probability and for the professional engineer to
139 make recommendations regarding necessary building stabilization
140 and foundation repair.

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

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

146 627.7073 Sinkhole reports.--

147 (1) Upon completion of testing as provided in s. 627.7072,
148 the professional engineer or ~~and~~ professional geologist shall
149 issue a report and certification to the insurer and the
150 policyholder as provided in this section.

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

155 1. That the cause of the actual physical and structural
156 damage is sinkhole activity within a reasonable professional
157 probability.

158 2. That the analyses conducted were of sufficient scope to
159 identify sinkhole activity as the cause of damage within a
160 reasonable professional probability.

161 3. A description of the tests performed.

162 4. A recommendation by the professional engineer of
 163 methods for stabilizing the land and building and for making
 164 repairs to the foundation.

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

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

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

174 3. A statement of the cause of the damage within a
 175 reasonable professional probability.

176 4. A description of the tests performed.

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

184 (2) Any insurer that has paid a claim for a sinkhole loss
 185 shall file a copy of the report and certification, prepared
 186 pursuant to subsection (1), with the county clerk of court
 187 ~~property appraiser~~, who shall record the report and

188 certification with the parcel number. The insurer shall bear the
 189 cost of filing and recording the report and certification. There
 190 shall be no cause of action or liability against an insurer for
 191 compliance with this section. The seller of real property upon
 192 which a sinkhole claim has been made shall disclose to the buyer
 193 of such property that a claim has been paid and whether or not
 194 the full amount of the proceeds were used to repair the sinkhole
 195 damage.

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

198 627.7074 Alternative procedure for resolution of disputed
 199 sinkhole insurance claims.--

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

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

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

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

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

215 (3) Following the receipt of the report provided under s.
216 627.7073 or the denial of a claim for a sinkhole loss, the
217 insurer shall notify the policyholder of his or her right to
218 participate in the neutral evaluation program under this
219 section. Neutral evaluation supersedes the alternative dispute
220 resolution process under s. 627.7015. The insurer shall provide
221 to the policyholder the consumer information pamphlet prepared
222 by the department pursuant to paragraph (2) (b).

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

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

241 (6) The insurer shall pay the costs associated with the
242 neutral evaluation.

243 (7) Upon receipt of a request for neutral evaluation, the
244 department shall refer the request to a neutral evaluator. The
245 neutral evaluator shall notify the policyholder and the insurer
246 of the date, time, and place of the neutral evaluation
247 conference. The conference may be held by telephone, if feasible
248 and desirable. The neutral evaluation conference shall be held
249 within 45 days after receipt of the request by the department.

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

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

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

263 (11) Any court proceeding related to the subject matter of
264 the neutral evaluation shall be stayed pending completion of the
265 neutral evaluation.

266 (12) For matters that are not resolved by the parties at
267 the conclusion of the neutral evaluation, the neutral evaluator

268 shall prepare a report stating that in his or her opinion the
269 sinkhole loss has been verified or eliminated and, if verified,
270 the need for and estimated costs of stabilizing the land and any
271 covered structures or buildings and other appropriate
272 remediation or structural repairs. The evaluator's report shall
273 be sent to all parties in attendance at the neutral evaluation
274 and to the department.

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

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

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

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

303 877.02 Solicitation of legal services or retainers
304 therefor; penalty.--

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

318 Section 7. (1) By February 1, 2007, the Office of
319 Insurance Regulation shall calculate a presumed factor to
320 reflect the impact of the changes made in this act to rates

321 filed by residential property insurers providing sinkhole loss
 322 coverage. The office shall issue a notice informing all insurers
 323 writing residential property insurance coverage of the presumed
 324 factor.

325 (2) In determining the presumed factor, the office shall
 326 use generally accepted actuarial techniques and standards in
 327 determining the expected impact on losses, expenses, and
 328 investment income of the insurer.

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

331 (4) Each residential property insurer shall, at its next
 332 annual rate filing after May 1, 2007, reflect an overall rate
 333 reduction at least as great as the presumed factor determined
 334 under subsection (1).

335 (5) The sum of \$250,000 in nonrecurring funds is
 336 appropriated from the Insurance Regulatory Trust Fund in the
 337 Department of Financial Services to the Office of Insurance
 338 Regulation for the 2006-2007 fiscal year for the purposes of
 339 funding the provisions of this section.

340 Section 8. The sums of \$115,322 in recurring funds and
 341 \$10,486 in nonrecurring funds are appropriated from the
 342 Insurance Regulatory Trust Fund in the Department of Financial
 343 Services for the 2006-2007 fiscal year for the purposes of
 344 funding the provisions of this act, and two full-time equivalent
 345 positions with 59,435 in associated salary rate are authorized.

346 Section 9. Except as otherwise expressly provided in this
 347 act, this act shall take effect July 1, 2006.