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HB 217, Engrossed 2

2006 Legislature

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; revising
15 requirements with respect to the required filing of a
16 report and certification by an insurer that has paid a
17 claim for a sinkhole loss; providing for the recording of
18 a report and certification with the clerk of court rather
19 than the property appraiser; limiting the effect of the
20 recording of the report and certification; creating s.
21 627.7074, F.S.; prescribing an alternative method for
22 resolving disputed sinkhole insurance claims; providing
23 definitions; prescribing procedures for invoking the
24 alternative method; providing that a recommendation by a
25 neutral evaluator is not binding on any party but
26 mandatory if requested by either party; providing for
27 payments of costs; requiring the insurer to pay attorney's

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28 fees of the policyholder up to a specified amount under
29 certain conditions; providing that an insurer is not
30 liable for attorney's fees or for certain damages under
31 certain conditions; amending s. 877.02, F.S.; prohibiting
32 certain solicitations by contractors and other persons
33 providing sinkhole remediation services; providing
34 penalties; requiring the Office of Insurance Regulation to
35 calculate a certain presumed factor on residential
36 property insurance rates; providing requirements and
37 procedures for determining such calculation; requiring the
38 office to provide notice of such rate factor to insurers;
39 requiring insurers to include such rate factor in certain
40 rate filings; providing appropriations and authorizing
41 additional positions and salary rates; providing effective
42 dates.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Effective October 1, 2006, subsection (1) and
47 paragraph (d) of subsection (2) of section 627.706, Florida
48 Statutes, are amended to read:

49 627.706 Sinkhole insurance; definitions.--

50 (1) Every insurer authorized to transact property
51 insurance in this state shall make available coverage for
52 insurable sinkhole losses on any structure, including contents
53 of personal property contained therein, to the extent provided
54 in the form to which the sinkhole coverage attaches. A policy

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55 for residential property insurance may include a deductible
 56 amount applicable to sinkhole losses equal to 1 percent, 2
 57 percent, 5 percent, or 10 percent of the policy dwelling limits,
 58 with appropriate premium discounts offered with each deductible
 59 amount.

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

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

71 627.707 Standards for investigation of sinkhole claims by
 72 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
 73 loss, an insurer must meet the following standards in
 74 investigating a claim:

75 (2) Following the insurer's initial inspection, the
 76 insurer shall engage a professional ~~an~~ engineer or a
 77 professional geologist to conduct testing as provided in s.
 78 627.7072 to determine the cause of the loss within a reasonable
 79 professional probability and issue a report as provided in s.
 80 627.7073, if:

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81 (a) The insurer is unable to identify a valid cause of the
 82 damage or discovers damage to the structure which is consistent
 83 with sinkhole loss; or

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

86 (3) Following the initial inspection of the insured
 87 premises, the insurer shall provide written notice to the
 88 policyholder disclosing the following information:

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

91 (b) A statement of the circumstances under which the
 92 insurer is required to engage a professional ~~an~~ engineer or a
 93 professional geologist to verify or eliminate sinkhole loss and
 94 to engage a professional ~~an~~ engineer to make recommendations
 95 regarding land and building stabilization and foundation repair.

96 (c) A statement regarding the right of the policyholder to
 97 request testing by a professional ~~an~~ engineer or a professional
 98 geologist and the circumstances under which the policyholder may
 99 demand certain testing.

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

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108 (b) The insurer may limit its payment to the actual cash
109 value of the sinkhole loss, not including underpinning or
110 grouting or any other repair technique performed below the
111 existing foundation of the building, until the policyholder
112 enters into a contract for the performance of building
113 stabilization or foundation repairs. After the policyholder
114 enters into the contract, the insurer shall pay the amounts
115 necessary to begin and perform such repairs as the work is
116 performed and the expenses are incurred. The insurer may not
117 require the policyholder to advance payment for such repairs. If
118 repair covered by a personal lines residential property
119 insurance policy has begun and the professional engineer
120 selected or approved by the insurer determines that the repair
121 cannot be completed within the policy limits, the insurer must
122 either complete the professional engineer's recommended repair
123 or tender the policy limits to the policyholder without a
124 reduction for the repair expenses incurred.

125 (c) Upon the insurer's obtaining the written approval of
126 the policyholder and any lienholder, the insurer may make
127 payment directly to the persons selected by the policyholder to
128 perform the land and building stabilization and foundation
129 repairs. The decision by the insurer to make payment to such
130 persons does not hold the insurer liable for the work performed.

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

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

137 Section 3. Section 627.7072, Florida Statutes, is amended
 138 to read:

139 627.7072 Testing standards for sinkholes.--

140 (1) The professional engineer or ~~and~~ professional
 141 geologist shall perform such tests as sufficient, in their
 142 professional opinion, to determine the presence or absence of
 143 sinkhole loss or other cause of damage within reasonable
 144 professional probability and for the professional engineer to
 145 make recommendations regarding necessary building stabilization
 146 and foundation repair.

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

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

152 627.7073 Sinkhole reports.--

153 (1) Upon completion of testing as provided in s. 627.7072,
 154 the professional engineer or ~~and~~ professional geologist shall
 155 issue a report and certification to the insurer and the
 156 policyholder as provided in this section.

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

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161 1. That the cause of the actual physical and structural
 162 damage is sinkhole activity within a reasonable professional
 163 probability.

164 2. That the analyses conducted were of sufficient scope to
 165 identify sinkhole activity as the cause of damage within a
 166 reasonable professional probability.

167 3. A description of the tests performed.

168 4. A recommendation by the professional engineer of
 169 methods for stabilizing the land and building and for making
 170 repairs to the foundation.

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

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

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

180 3. A statement of the cause of the damage within a
 181 reasonable professional probability.

182 4. A description of the tests performed.

183 (c) The respective findings, opinions, and recommendations
 184 of the professional engineer or ~~and~~ professional geologist as to
 185 the cause of distress to the property ~~verification or~~
 186 ~~elimination of a sinkhole loss~~ and the findings, opinions, and
 187 recommendations of the professional engineer as to land and

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188 building stabilization and foundation repair shall be presumed
 189 correct.

190 (2) Any insurer that has paid a claim for a sinkhole loss
 191 shall file a copy of the report and certification, prepared
 192 pursuant to subsection (1) and including the legal description
 193 of the real property and the name of the property owner, with
 194 the county clerk of court ~~property appraiser~~, who shall record
 195 the report and certification ~~with the parcel number~~. The insurer
 196 shall bear the cost of filing and recording the report and
 197 certification. There shall be no cause of action or liability
 198 against an insurer for compliance with this section. The
 199 recording of the report and certification shall not constitute a
 200 lien or encumbrance or restriction on the title to the real
 201 property, nor constitute a defect in the title to the real
 202 property, create any cause of action or liability against any
 203 grantor of the real property for breach of any warranty of good
 204 title or warranty against encumbrances, nor create any cause of
 205 action or liability against any title insurer that insures the
 206 title to the real property. The seller of real property upon
 207 which a sinkhole claim has been made by the seller and paid by
 208 the insurer shall disclose to the buyer of such property that a
 209 claim has been paid and whether or not the full amount of the
 210 proceeds were used to repair the sinkhole damage.

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

213 627.7074 Alternative procedure for resolution of disputed
 214 sinkhole insurance claims.--

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

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

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

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

225 (b) The department shall prepare a consumer information
226 pamphlet for distribution by insurers to policyholders which
227 clearly describes the neutral evaluation process and includes
228 information and forms necessary for the policyholder to request
229 a neutral evaluation.

230 (3) Following the receipt of the report provided under s.
231 627.7073 or the denial of a claim for a sinkhole loss, the
232 insurer shall notify the policyholder of his or her right to
233 participate in the neutral evaluation program under this
234 section. Neutral evaluation supersedes the alternative dispute
235 resolution process under s. 627.7015. The insurer shall provide
236 to the policyholder the consumer information pamphlet prepared
237 by the department pursuant to paragraph (2) (b).

238 (4) Neutral evaluation is nonbinding but mandatory if
239 requested by either party. A request for neutral evaluation may
240 be filed with the department by the policyholder or the insurer
241 on a form approved by the department. The request for neutral

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242 evaluation must state the reason for the request and must
243 include an explanation of all the issues in dispute at the time
244 of the request. Filing a request for neutral evaluation tolls
245 the applicable time requirements for filing suit for a period of
246 60 days following the conclusion of the neutral evaluation
247 process or the time prescribed in s. 95.11, whichever is later.

248 (5) Neutral evaluation shall be conducted as an informal
249 process in which formal rules of evidence and procedure need not
250 be observed. A party to neutral evaluation is not required to
251 attend neutral evaluation if a representative of the party
252 attends and has the authority to make a binding decision on
253 behalf of the party. All parties shall participate in the
254 evaluation in good faith.

255 (6) The insurer shall pay the costs associated with the
256 neutral evaluation.

257 (7) Upon receipt of a request for neutral evaluation, the
258 department shall provide the parties a list of certified neutral
259 evaluators. The parties shall mutually select a neutral
260 evaluator from the list and promptly inform the department. If
261 the parties cannot agree to a neutral evaluator within 10
262 business days, the department shall appoint a neutral evaluator
263 from the department list. Upon selection or appointment, the
264 department shall promptly refer the request to the neutral
265 evaluator. Within 5 business days of the referral, the neutral
266 evaluator shall notify the policyholder and the insurer of the
267 date, time, and place of the neutral evaluation conference. The
268 conference may be held by telephone, if feasible and desirable.

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269 The neutral evaluation conference shall be held within 45 days
270 after the receipt of the request by the department.

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

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

278 (10) Evidence of an offer to settle a claim during the
279 neutral evaluation process, as well as any relevant conduct or
280 statements made in negotiations concerning the offer to settle a
281 claim, is inadmissible to prove liability or absence of
282 liability for the claim or its value, except as provided in
283 subsection (13).

284 (11) Any court proceeding related to the subject matter of
285 the neutral evaluation shall be stayed pending completion of the
286 neutral evaluation.

287 (12) For matters that are not resolved by the parties at
288 the conclusion of the neutral evaluation, the neutral evaluator
289 shall prepare a report stating that in his or her opinion the
290 sinkhole loss has been verified or eliminated and, if verified,
291 the need for and estimated costs of stabilizing the land and any
292 covered structures or buildings and other appropriate
293 remediation or structural repairs. The evaluator's report shall
294 be sent to all parties in attendance at the neutral evaluation
295 and to the department.

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296 (13) The recommendation of the neutral evaluator is not
297 binding on any party, and the parties retain access to court.
298 The neutral evaluator's written recommendation is admissible in
299 any subsequent action or proceeding relating to the claim or to
300 the cause of action giving rise to the claim.

301 (14) If the neutral evaluator first verifies the existence
302 of a sinkhole and, second, recommends the need for and estimates
303 costs of stabilizing the land and any covered structures or
304 buildings and other appropriate remediation or structural
305 repairs, which costs exceed the amount that the insurer has
306 offered to pay the policyholder, the insurer is liable to the
307 policyholder for up to \$2,500 in attorney's fees for the
308 attorney's participation in the neutral evaluation process. For
309 purposes of this subsection, the term "offer to pay" means a
310 written offer signed by the insurer or its legal representative
311 and delivered to the policyholder within 10 days after the
312 insurer receives notice that a request for neutral evaluation
313 has been made under this section.

314 (15) If the insurer timely agrees in writing to comply and
315 timely complies with the recommendation of the neutral
316 evaluator, but the policyholder declines to resolve the matter
317 in accordance with the recommendation of the neutral evaluator
318 pursuant to this section:

319 (a) The insurer is not liable for extra-contractual
320 damages related to a claim for a sinkhole loss but only as
321 related to the issues determined by the neutral-evaluation
322 process. Nothing in this section shall effect or impair claims

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323 for extra-contractual damages unrelated to the issues determined
324 by the neutral-evaluation process contained in this section.

325 (b) The insurer is not liable for attorney's fees under s.
326 627.428 or other provisions of the insurance code unless the
327 policyholder obtains a judgment that is more favorable than the
328 recommendation of the neutral evaluator.

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

331 877.02 Solicitation of legal services or retainers
332 therefor; penalty.--

333 (2) It shall be unlawful for any person in the employ of
334 or in any capacity attached to any hospital, sanitarium, police
335 department, wrecker service or garage, prison or court, ~~or~~ for a
336 person authorized to furnish bail bonds, investigators,
337 photographers, insurance or public adjusters, or for a general
338 or other contractor as defined in s. 489.105 or other business
339 providing sinkhole remediation services, to communicate directly
340 or indirectly with any attorney or person acting on said
341 attorney's behalf for the purpose of aiding, assisting or
342 abetting such attorney in the solicitation of legal business or
343 the procurement through solicitation of a retainer, written or
344 oral, or any agreement authorizing the attorney to perform or
345 render legal services.

346 Section 7. (1) By September 1, 2006, the Office of
347 Insurance Regulation shall calculate a presumed factor to
348 reflect the impact of the changes made in this act and sections
349 17, 18, 19, 20, and 21 of chapter 2005-111, Laws of Florida, to

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350 rates filed by residential property insurers providing sinkhole
351 loss coverage. The office shall issue a notice informing all
352 insurers writing residential property insurance coverage of the
353 presumed factor.

354 (2) In determining the presumed factor, the office shall
355 use generally accepted actuarial techniques and standards in
356 determining the expected impact on losses, expenses, and
357 investment income of the insurer.

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

360 (4) Each residential property insurer shall, at its next
361 rate filing after October 1, 2006, reflect a rate change that
362 takes into account the presumed factor determined under
363 subsection (1).

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

369 Section 8. The sums of \$115,322 in recurring funds and
370 \$10,486 in nonrecurring funds are appropriated from the
371 Insurance Regulatory Trust Fund in the Department of Financial
372 Services for the 2006-2007 fiscal year for the purposes of
373 funding the provisions of this act, and two full-time equivalent
374 positions with 59,435 in associated salary rate are authorized.

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