

Bill No. SB 286

Barcode 025144

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Fasano) recommended  
the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

Section 2. Subsection (1) of section 627.706, Florida  
Statutes, is amended to read:

627.706 Sinkhole insurance; definitions.--

(1) Every insurer authorized to transact property  
insurance in this state shall make available coverage for  
insurable sinkhole losses on any structure, including contents  
of personal property contained therein, to the extent provided  
in the form to which the sinkhole coverage attaches. A policy  
for residential property insurance may include a deductible  
amount applicable to sinkhole losses which is no less than 1  
percent of the policy dwelling limits. Such a policy may also  
include one or more additional deductible amounts applicable

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1 to sinkhole losses equal to 2 percent, 5 percent, and 10  
2 percent, with appropriate premium discounts offered with each  
3 deductible amount.

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

6 627.707 Standards for investigation of sinkhole claims  
7 by insurers; nonrenewals.--Upon receipt of a claim for a  
8 sinkhole loss, an insurer must meet the following standards in  
9 investigating a claim:

10 (2) Following the insurer's initial inspection, the  
11 insurer shall engage a professional ~~an~~ engineer or a  
12 professional geologist to conduct testing as provided in s.  
13 627.7072 to determine the cause of the loss within a  
14 reasonable professional probability and issue a report as  
15 provided in s. 627.7073, if:

16 (a) The insurer is unable to identify a valid cause of  
17 the damage or discovers damage to the structure which is  
18 consistent with sinkhole loss; or

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

21 (3) Following the initial inspection of the insured  
22 premises, the insurer shall provide written notice to the  
23 policyholder disclosing the following information:

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

26 (b) A statement of the circumstances under which the  
27 insurer is required to engage a professional ~~an~~ engineer or a  
28 professional geologist to verify or eliminate sinkhole loss  
29 and to engage a professional ~~an~~ engineer to make  
30 recommendations regarding land and building stabilization and  
31 foundation repair.

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1           (c) A statement regarding the right of the  
 2 policyholder to request testing by a professional ~~an~~ engineer  
 3 or a professional geologist and the circumstances under which  
 4 the policyholder may demand certain testing.

5           (5)(a) Subject to paragraph (b), if a sinkhole loss is  
 6 verified, the insurer shall pay to stabilize the land and  
 7 building and repair the foundation in accordance with the  
 8 recommendations of the professional engineer as provided under  
 9 s. 627.7073, and in consultation with the policyholder,  
 10 subject to the coverage and terms of the policy. The insurer  
 11 shall pay for other repairs to the structure and contents in  
 12 accordance with the terms of the policy.

13           (b) The insurer may limit its payment to the actual  
 14 cash value of the sinkhole loss, not including underpinning or  
 15 grouting or any other repair technique performed below the  
 16 existing foundation of the building, until the policyholder  
 17 enters into a contract for the performance of building  
 18 stabilization or foundation repairs. After the policyholder  
 19 enters into the contract, the insurer shall pay the amounts  
 20 necessary to begin and perform such repairs as the work is  
 21 performed and the expenses are incurred. The insurer may not  
 22 require the policyholder to advance payment for such repairs.  
 23 If repair covered by a personal lines residential property  
 24 insurance policy has begun and the professional engineer  
 25 selected or approved by the insurer determines that the repair  
 26 cannot be completed within the policy limits, the insurer must  
 27 either complete the professional engineer's recommended repair  
 28 or tender the policy limits to the policyholder without a  
 29 reduction for the repair expenses incurred.

30           (c) Upon the insurer's obtaining the written approval  
 31 of the policyholder and any lienholder, the insurer may make

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1 payment directly to the persons selected by the policyholder  
 2 to perform the land and building stabilization and foundation  
 3 repairs. The decision by the insurer to make payment to such  
 4 persons does not hold the insurer liable for the work  
 5 performed.

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

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

12 Section 4. Subsection (1) of section 627.7072, Florida  
 13 Statutes, is amended to read:

14 627.7072 Testing standards for sinkholes.--

15 (1) The professional engineer and professional  
 16 geologist shall perform such tests as sufficient, in their  
 17 professional opinion, to determine the presence or absence of  
 18 sinkhole loss or other cause of damage within reasonable  
 19 professional probability and for the professional engineer to  
 20 make recommendations regarding necessary building  
 21 stabilization and foundation repair.

22 Section 5. Subsections (1) and (2) of section  
 23 627.7073, Florida Statutes, are amended to read:

24 627.7073 Sinkhole reports.--

25 (1) Upon completion of testing as provided in s.  
 26 627.7072, the professional engineer and professional geologist  
 27 shall issue a report and certification to the insurer and the  
 28 policyholder as provided in this section.

29 (a) Sinkhole loss is verified if, based upon tests  
 30 performed in accordance with s. 627.7072, a professional ~~an~~  
 31 engineer and a professional geologist issue a written report

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1 and certification stating:

2 1. That the cause of the actual physical and  
3 structural damage is sinkhole activity within a reasonable  
4 professional probability.

5 2. That the analyses conducted were of sufficient  
6 scope to identify sinkhole activity as the cause of damage  
7 within a reasonable professional probability.

8 3. A description of the tests performed.

9 4. A recommendation by the professional engineer of  
10 methods for stabilizing the land and building and for making  
11 repairs to the foundation.

12 (b) If sinkhole activity is eliminated as the cause of  
13 damage to the structure, the professional engineer and  
14 professional geologist shall issue a written report and  
15 certification to the policyholder and the insurer stating:

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

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

21 3. A statement of the cause of the damage within a  
22 reasonable professional probability.

23 4. A description of the tests performed.

24 (c) The respective findings, opinions, and  
25 recommendations of the professional engineer and professional  
26 geologist as to the cause of distress to the property  
27 ~~verification or elimination of a sinkhole loss~~ and the  
28 findings, opinions, and recommendations of the professional  
29 engineer as to land and building stabilization and foundation  
30 repair are conclusive, unless contrary findings and  
31 conclusions are proven by clear and convincing evidence shall

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1 ~~be presumed correct.~~

2           (2) Any insurer that has paid a claim for a sinkhole  
3 loss shall file a copy of the report and certification,  
4 prepared pursuant to subsection (1), with the county clerk of  
5 court ~~property appraiser~~, who shall record the report and  
6 certification with the parcel number. The insurer shall bear  
7 the cost of filing and recording the report and certification.  
8 There shall be no cause of action or liability against an  
9 insurer for compliance with this section. The seller of real  
10 property upon which a sinkhole claim has been made shall  
11 disclose to the buyer of such property that a claim has been  
12 paid and whether or not the full amount of the proceeds were  
13 used to repair the sinkhole damage.

14           Section 6. Section 627.7074, Florida Statutes, is  
15 created to read:

16           627.7074 Alternative procedure for resolution of  
17 disputed sinkhole insurance claims.--

18           (1) As used in this section:

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

21           (b) "Neutral evaluator" means a professional engineer  
22 or a professional geologist who has completed a course of  
23 study in alternative dispute resolution designed or approved  
24 by the department for use in the neutral evaluation process,  
25 who is determined to be fair and impartial, and who is  
26 attempting to resolve the dispute or claim under this section.

27           (c) "Department" means the Department of Financial  
28 Services.

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

31           (3) Following the receipt of the report provided under

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1 s. 627.7073 or the denial of a claim for a sinkhole loss, the  
2 insurer shall notify the policyholder of his or her right to  
3 participate in the neutral evaluation program under this  
4 section. Neutral evaluation supersedes the alternative dispute  
5 resolution process under s. 627.7015. The department shall  
6 prepare a consumer information pamphlet for distribution by  
7 the insurer to policyholders. The pamphlet shall clearly  
8 describe the neutral evaluation process and include directions  
9 and forms necessary for the policyholder to request a neutral  
10 evaluation.

11 (4) Neutral evaluation is optional and nonbinding.  
12 Either the policyholder or the insurer may decline to  
13 participate. A request for neutral evaluation shall be filed  
14 with the department by the policyholder or the insurer on a  
15 form approved by the department. The request for neutral  
16 evaluation must state the reason for the request and must  
17 include an explanation of all the issues in dispute at the  
18 time of the request. Filing a request for neutral evaluation  
19 tolls the applicable time requirements for filing suit for a  
20 period of 60 days following the conclusion of the neutral  
21 evaluation process or the time prescribed in s. 95.11,  
22 whichever is later.

23 (5) Neutral evaluation shall be conducted as an  
24 informal process in which formal rules of evidence and  
25 procedure need not be observed. A party to neutral evaluation  
26 is not required to attend neutral evaluation if a  
27 representative of the party attends and has the authority to  
28 make a binding decision on behalf of the party. All parties  
29 shall participate in the evaluation in good faith.

30 (6) The insurer shall pay the costs associated with  
31 the neutral evaluation.

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1       (7) Upon receipt of a request for neutral evaluation,  
2 the department shall refer the request to a neutral evaluator.  
3 The neutral evaluator shall notify the policyholder and the  
4 insurer of the date, time, and place of the neutral evaluation  
5 conference. The conference may be held by telephone, if  
6 feasible and desirable. The neutral evaluation conference  
7 shall be held within 45 days after receipt of the request by  
8 the department.

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

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

16       (10) Disclosures and information divulged in the  
17 neutral evaluation process are not admissible in any  
18 subsequent action or proceeding relating to the claim or to  
19 the cause of action giving rise to the claim, except as  
20 provided in subsection (13).

21       (11) Any court proceeding related to the subject  
22 matter of the neutral evaluation shall be stayed pending  
23 completion of the neutral evaluation.

24       (12) For matters that are not resolved by the parties  
25 at the conclusion of the neutral evaluation, the neutral  
26 evaluator shall prepare a report stating that in his or her  
27 opinion the sinkhole loss has been verified or eliminated and,  
28 if verified, the need for and estimated costs of stabilizing  
29 the land and any covered structures or buildings and other  
30 appropriate remediation or structural repairs. The evaluator's  
31 report shall be sent to all parties in attendance at the

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1 neutral evaluation and to the department.

2       (13) The recommendation of the neutral evaluator is  
3 not binding on any party and the parties retain access to  
4 courts. The neutral evaluator's written recommendation is  
5 admissible in any subsequent action or proceeding relating to  
6 the claim or to the cause of action giving rise to the claim  
7 only for purposes of determining the award of attorney's fees.

8       (14) If the policyholder declines to participate in  
9 neutral evaluation requested by the insurer or declines to  
10 resolve the matter in accordance with the recommendation of  
11 the neutral evaluator pursuant to this section, the insurer  
12 shall not be liable for attorney's fees under s. 627.428 or  
13 other provisions of the insurance code or for extra  
14 contractual damages related to a claim for a sinkhole loss.

15       (15) A party may seek judicial review of the  
16 recommendation of the neutral evaluator to determine whether  
17 the recommendation is reasonable. A recommendation is  
18 reasonable unless it was procured by corruption, fraud, or  
19 other undue means; there was evident partiality by the neutral  
20 evaluator or misconduct prejudicing the rights of any party;  
21 or the neutral evaluator exceeded the authority and power  
22 granted by this subsection. If the court declares the  
23 recommendation is not reasonable, the neutral evaluation  
24 recommendation shall be vacated.

25       Section 7. (1) By February 1, 2007, the Office of  
26 Insurance Regulation shall calculate a presumed factor to  
27 reflect the effect of the changes made in this act to rates  
28 filed by residential property insurers providing sinkhole loss  
29 coverage. The office shall issue a notice informing all  
30 insurers writing residential property insurance of the  
31 presumed factor.

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1       (2) In determining the presumed factor, the office  
 2 shall use generally accepted actuarial techniques and  
 3 standards in calculating the expected effect on losses,  
 4 expenses, and investment income of the insurer.

5       (3) The office may, by contract, hire an appropriate  
 6 vendor to determine the presumed factor.

7       (4) Each residential property insurer shall, at its  
 8 next annual rate filing after May 1, 2007, reflect an overall  
 9 rate reduction at least as great as the presumed factor  
 10 determined pursuant to subsection (1).

11           Section 8. This act shall take effect July 1, 2006.

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14 ===== T I T L E   A M E N D M E N T =====

15 And the title is amended as follows:

16           Delete everything before the enacting clause

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18 and insert:

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          A bill to be entitled

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          An act relating to sinkhole insurance; creating

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          the "Sinkhole Insurance Relief Act"; amending

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          s. 627.706, F.S.; providing for a deductible

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          amount applicable to sinkhole losses in a

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          policy for residential property insurance;

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          amending s. 627.707, F.S.; revising references

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          to certain engineers; authorizing insurers to

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          make direct payment for certain repairs;

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          excluding insurers from liability for repairs

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          under certain circumstances; amending s.

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          627.7072, F.S.; revising references to certain

31

          engineers; amending s. 627.7073, F.S.; revising

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1 a presumption relating to the findings,  
2 opinions, and recommendations in sinkhole  
3 reports; providing for the recording of  
4 sinkhole reports by the clerk of court rather  
5 than the property appraiser; creating s.  
6 627.7074, F.S.; providing for an alternative  
7 procedure for the resolution of disputed  
8 sinkhole insurance claims which is optional,  
9 nonbinding, and informal; providing  
10 definitions; requiring the Department of  
11 Financial Services to certify and maintain a  
12 list of neutral evaluators, prepare a consumer  
13 information pamphlet explaining the alternative  
14 procedure, and adopt rules for the  
15 implementation of an alternative procedure;  
16 providing for payment of costs and attorney's  
17 fees; preserving access to courts and  
18 authorizing judicial review of neutral  
19 evaluation recommendations; requiring that the  
20 Office of Insurance Regulation calculate, and  
21 notify certain insurers of, a presumed factor  
22 to reflect the effect of changes made by the  
23 act; specifying criteria for the presumed  
24 factor; authorizing the office to hire an  
25 appropriate vendor to calculate the factor;  
26 requiring residential property insurers to  
27 reflect an overall rate reduction concerning  
28 the presumed factor; providing an effective  
29 date.

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