

Bill No. CS for SB 286

Barcode 055438

CHAMBER ACTION

Senate

House

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Comm: FAV  
04/25/2006 09:55 PM  
  
Floor: 3/F/2R  
05/04/2006 10:27 AM

.  
. .  
. .  
. .  
. .

The Committee on Judiciary (Campbell) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 7, line 13, through  
page 11, line 3, delete those lines

and insert:

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

(1) As used in this section:

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

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

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

Bill No. CS for SB 286

Barcode 055438

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

3       (b) The department shall prepare a consumer  
4 information pamphlet for distribution by the insurer to  
5 policyholders. The pamphlet must clearly describe the neutral  
6 evaluation process and include directions and forms necessary  
7 for the policyholder to request a neutral evaluation.

8       (3) Following the receipt of the report provided under  
9 s. 627.7073 or the denial of a claim for a sinkhole loss, the  
10 insurer shall notify the policyholder of his or her right to  
11 participate in the neutral evaluation program under this  
12 section. Neutral evaluation, if requested by either the  
13 policyholder or insurer, supersedes the alternative dispute  
14 resolution process under s. 627.7015. The insurer shall  
15 provide the policyholder with the consumer information  
16 pamphlet prepared by the department pursuant to paragraph  
17 (2)(b).

18       (4) Neutral evaluation is nonbinding but mandatory if  
19 requested by either party. The policyholder or the insurer may  
20 request to participate. A request for neutral evaluation must  
21 be filed with the department by the policyholder or the  
22 insurer on a form approved by the department. The request for  
23 neutral evaluation must state the reason for the request and  
24 must include an explanation of the issues in dispute at the  
25 time of the request. Filing a request for neutral evaluation  
26 tolls the applicable time requirements for filing suit for 60  
27 days following the conclusion of the neutral evaluation  
28 process or the time prescribed in s. 95.11, whichever is  
29 later.

30       (5) Neutral evaluation must be conducted as an  
31 informal process in which formal rules of evidence and

Bill No. CS for SB 286

Barcode 055438

1 procedure need not be observed. A party to neutral evaluation  
2 is not required to attend neutral evaluation if a  
3 representative of the party attends and has the authority to  
4 make a binding decision on behalf of the party. All parties  
5 must participate in the evaluation in good faith.

6 (6) The insurer shall pay the costs associated with  
7 the neutral evaluation. However, if the policyholder seeks  
8 judicial review of the recommendation of the neutral evaluator  
9 and does not prevail, the policyholder shall pay the costs  
10 associated with the neutral evaluation.

11 (7) Upon receipt of a request for neutral evaluation,  
12 the department shall provide the parties a list of certified  
13 neutral evaluators. The parties shall mutually select a  
14 neutral evaluator from the list and promptly inform the  
15 department. If the parties cannot agree to a neutral evaluator  
16 within 10 business days, the department shall appoint a  
17 neutral evaluator from the department's list. Upon selection  
18 or appointment, the department shall promptly refer the  
19 request to the neutral evaluator. Within 5 days after the  
20 referral, the neutral evaluator shall notify the policyholder  
21 and the insurer of the date, time, and place of the neutral  
22 evaluation conference. The conference may be held by  
23 telephone, if feasible and desirable. The neutral evaluation  
24 conference shall be held within 45 days after receipt of the  
25 request by the department.

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

28 (9) For policyholders who are not represented by an  
29 attorney, a consumer affairs specialist of the department or  
30 an employee designated as the primary contact for consumers on  
31 issues relating to sinkholes under s. 20.121 must be available

Barcode 055438

1 for consultation to the extent that he or she may lawfully do  
2 so.

3 (10) Evidence of an offer to settle a claim during the  
4 neutral evaluation process, as well as any relevant conduct or  
5 statements made in negotiations concerning the offer to settle  
6 a claim, is inadmissible to prove liability or absence of  
7 liability for the claim or its value.

8 (11) Disclosures and information divulged in the  
9 neutral evaluation process which are not subject to subsection  
10 (10) are admissible in any subsequent action or proceeding  
11 relating to the claim or to the cause of action giving rise to  
12 the claim.

13 (12) Any pending court proceeding related to the  
14 subject matter of the neutral evaluation must be stayed  
15 pending completion of the neutral evaluation.

16 (13) For matters that are not resolved by the parties  
17 at the conclusion of the neutral evaluation, the neutral  
18 evaluator shall prepare a report stating that in his or her  
19 opinion the sinkhole loss has been verified or eliminated and,  
20 if verified, the need for and estimated costs of stabilizing  
21 the land and any covered structures or buildings and other  
22 appropriate remediation or structural repairs. The evaluator's  
23 report must be sent to all parties in attendance at the  
24 neutral evaluation and to the department.

25 (14) The recommendation of the neutral evaluator is  
26 not binding on any party and the parties retain access to  
27 courts. The neutral evaluator's written recommendation is  
28 admissible in any subsequent action or proceeding relating to  
29 the claim or to the cause of action giving rise to the claim.

30 (15)(a) A party may seek judicial review of the  
31 recommendation of the neutral evaluator to determine whether

Bill No. CS for SB 286

Barcode 055438

1 the recommendation is reasonable. The recommendation is  
2 presumed to be reasonable and the party seeking judicial  
3 review has the burden to prove to the trier of fact by a  
4 preponderance of the evidence that the recommendation is not  
5 reasonable.

6 (b) A recommendation is presumed not reasonable if it  
7 was procured by corruption, fraud, or other undue means, there  
8 was evident partiality by the neutral evaluator or misconduct  
9 prejudicing the rights of any party, it is not supported by  
10 competent and substantial evidence, is contrary to the law, or  
11 the neutral evaluator exceeded the authority and power granted  
12 by this subsection.

13 (c) If the trier of fact determines that the  
14 recommendation is not reasonable, the neutral evaluation  
15 recommendation must be vacated, and the trier of fact shall  
16 enter a verdict based on the evidence presented.

17 (16) On or before October 1, 2008, the department  
18 shall provide a report to the Governor, the President of the  
19 Senate, and the Speaker of the House of Representatives  
20 setting forth information regarding claims processed using the  
21 alternative procedure set forth in this section, including,  
22 but not limited to, the number of claims processed and, in  
23 both summary and detail form for each claim processed, the  
24 amount of the claim in dispute, the time required to process  
25 the claim under the alternative procedure, the outcome using  
26 the alternative procedure, the cost of using the alternative  
27 procedure, and the ultimate outcome of judicial review where  
28 applicable.

29 (17) This section expires on October 1, 2009.  
30  
31

Bill No. CS for SB 286

Barcode 055438

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

2 And the title is amended as follows:

3            On page 1, lines 26 through 31, delete those lines

4

5 and insert:

6            costs; providing for judicial review; providing

7            that the recommendation of the neutral

8            evaluator is presumed to be reasonable;

9            providing exceptions; requiring the Department

10           of Financial Services to submit a report to the

11           Governor and the Legislature by a specified

12           date; providing for future repeal of the

13           alternative procedures by a specified date;

14           amending s.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31