

Bill No. SB 286

Barcode 100880

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: WD  
04/05/2006 12:31 PM

.  
. .  
. .  
. .  
. .  
. .

The Committee on Banking and Insurance (Campbell) recommended the following **amendment to amendment** (025144):

**Senate Amendment**

On page 6, line 16, through  
page 9, line 24, delete those lines

and insert:

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

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

(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. SB 286

Barcode 100880

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

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

14       (4) Neutral evaluation is optional and nonbinding.  
15 Either the policyholder or the insurer may decline to  
16 participate. A request for neutral evaluation must be filed  
17 with the department by the policyholder or the insurer on a  
18 form approved by the department. The request for neutral  
19 evaluation must state the reason for the request and must  
20 include an explanation of the issues in dispute at the time of  
21 the request. Filing a request for neutral evaluation tolls the  
22 applicable time requirements for filing suit for a period of  
23 60 days following the conclusion of the neutral-evaluation  
24 process or the time prescribed in s. 95.11, whichever is  
25 later.

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

Bill No. SB 286

Barcode 100880

1 shall participate in the evaluation in good faith.

2 (6) The insurer shall pay the costs associated with  
3 the neutral evaluation.

4 (7) Upon receipt of a request for neutral evaluation,  
5 the department shall provide to the parties a list of  
6 certified neutral evaluators. The parties shall mutually  
7 select a neutral evaluator from the list. If the parties  
8 cannot agree to a neutral evaluator within 10 business days, a  
9 court of competent jurisdiction shall appoint a neutral  
10 evaluator from the department list.

11 (8) Within 5 days after the referral, the neutral  
12 evaluator shall notify the policyholder and the insurer of the  
13 date, time, and place of the neutral evaluation conference.  
14 The conference may be held by telephone, if feasible and  
15 desirable. The neutral evaluation conference shall be held  
16 within 45 days after receipt of the request by the department.

17 (9) The department shall adopt rules of procedure for  
18 the neutral-evaluation process.

19 (10) For policyholders not represented by an attorney,  
20 a consumer affairs specialist of the department or an employee  
21 designated as the primary contact for consumers on issues  
22 relating to sinkholes under s. 20.121 shall be available for  
23 consultation to the extent that he or she may lawfully do so.

24 (11) Disclosures and information divulged in the  
25 neutral-evaluation process are not admissible in any  
26 subsequent action or proceeding relating to the claim or to  
27 the cause of action giving rise to the claim, except as  
28 provided in subsection (13).

29 (12) Any court proceeding related to the subject  
30 matter of the neutral evaluation shall be stayed pending  
31 completion of the neutral evaluation.

Bill No. SB 286

Barcode 100880

1       (13) For matters that are not resolved by the parties  
2 at the conclusion of the neutral evaluation, the neutral  
3 evaluator shall prepare a report stating that in his or her  
4 opinion the sinkhole loss has been verified or eliminated and,  
5 if verified, the need for and estimated costs of stabilizing  
6 the land and any covered structures or buildings and other  
7 appropriate remediation or structural repairs. The evaluator's  
8 report shall be sent to all parties in attendance at the  
9 neutral evaluation and to the department.

10       (14) The recommendation of the neutral evaluator is  
11 not binding on any party, and the parties retain access to  
12 courts. The neutral evaluator's written recommendation is  
13 admissible in any subsequent action or proceeding relating to  
14 the claim or to the cause of action giving rise to the claim.

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 that the  
23 recommendation is not reasonable, the neutral-evaluation  
24 recommendation shall be vacated.

25  
26  
27  
28  
29  
30  
31