

Bill No. SB 286

Barcode 165004

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. 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 equal to 1 percent, 2
percent, 5 percent, or 10 percent of the policy dwelling
limits, with appropriate premium discounts offered with each
deductible amount.

Section 2. Subsections (2), (3), (5), (6), and (9) of

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1 section 627.707, Florida Statutes, are amended to read:

2 627.707 Standards for investigation of sinkhole claims
3 by insurers; nonrenewals.--Upon receipt of a claim for a
4 sinkhole loss, an insurer must meet the following standards in
5 investigating a claim:

6 (2) Following the insurer's initial inspection, the
7 insurer shall engage a professional ~~an~~ engineer or a
8 professional geologist to conduct testing as provided in s.
9 627.7072 to determine the cause of the loss within a
10 reasonable professional probability and issue a report as
11 provided in s. 627.7073, if:

12 (a) The insurer is unable to identify a valid cause of
13 the damage or discovers damage to the structure which is
14 consistent with sinkhole loss; or

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

17 (3) Following the initial inspection of the insured
18 premises, the insurer shall provide written notice to the
19 policyholder disclosing the following information:

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

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

28 (c) A statement regarding the right of the
29 policyholder to request testing by a professional ~~an~~ engineer
30 or a professional geologist and the circumstances under which
31 the policyholder may demand certain testing.

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

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

26 (c) Upon the insurer's obtaining the written approval
27 of the policyholder and any lienholder, the insurer may make
28 payment directly to the persons selected by the policyholder
29 to perform the land and building stabilization and foundation
30 repairs. The decision by the insurer to make payment to such
31 persons does not hold the insurer liable for the work

1 performed.

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

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

8 Section 3. Subsection (1) of section 627.7072, Florida
9 Statutes, is amended to read:

10 627.7072 Testing standards for sinkholes.--

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

18 Section 4. Subsections (1) and (2) of section
19 627.7073, Florida Statutes, are amended to read:

20 627.7073 Sinkhole reports.--

21 (1) Upon completion of testing as provided in s.
22 627.7072, the professional engineer and professional geologist
23 shall issue a report and certification to the insurer and the
24 policyholder as provided in this section.

25 (a) Sinkhole loss is verified if, based upon tests
26 performed in accordance with s. 627.7072, a professional ~~an~~
27 engineer and a professional geologist issue a written report
28 and certification stating:

29 1. That the cause of the actual physical and
30 structural damage is sinkhole activity within a reasonable
31 professional probability.

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

4 3. A description of the tests performed.

5 4. A recommendation by the professional engineer of
6 methods for stabilizing the land and building and for making
7 repairs to the foundation.

8 (b) If sinkhole activity is eliminated as the cause of
9 damage to the structure, the professional engineer and
10 professional geologist shall issue a written report and
11 certification to the policyholder and the insurer stating:

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

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

17 3. A statement of the cause of the damage within a
18 reasonable professional probability.

19 4. A description of the tests performed.

20 (c) The respective findings, opinions, and
21 recommendations of the professional engineer and professional
22 geologist as to the cause of distress to the property
23 ~~verification or elimination of a sinkhole loss~~ and the
24 findings, opinions, and recommendations of the professional
25 engineer as to land and building stabilization and foundation
26 repair shall be presumed correct.

27 (2) Any insurer that has paid a claim for a sinkhole
28 loss shall file a copy of the report and certification,
29 prepared pursuant to subsection (1), with the county clerk of
30 court ~~property appraiser~~, who shall record the report and
31 certification with the parcel number. The insurer shall bear

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1 the cost of filing and recording the report and certification.
 2 There shall be no cause of action or liability against an
 3 insurer for compliance with this section. The seller of real
 4 property upon which a sinkhole claim has been made shall
 5 disclose to the buyer of such property that a claim has been
 6 paid and whether or not the full amount of the proceeds were
 7 used to repair the sinkhole damage.

8 Section 5. Section 627.7074, Florida Statutes, is
 9 created to read:

10 627.7074 Alternative procedure for resolution of
 11 disputed sinkhole insurance claims.--

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

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

15 (b) "Neutral evaluator" means an engineer or a
 16 professional geologist who has completed a course of study in
 17 alternative dispute resolution designed or approved by the
 18 department for use in the neutral evaluation process, who is
 19 determined to be fair and impartial.

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

22 (b) The department shall prepare a consumer
 23 information pamphlet for distribution by insurers to
 24 policyholders which clearly describes the neutral evaluation
 25 process and includes information and forms necessary for the
 26 policyholder to request a neutral evaluation.

27 (3) Following the receipt of the report provided under
 28 s. 627.7073 or the denial of a claim for a sinkhole loss, the
 29 insurer shall notify the policyholder of his or her right to
 30 participate in the neutral evaluation program under this
 31 section. Neutral evaluation supersedes the alternative dispute

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1 resolution process under s. 627.7015. The insurer shall
2 provide to the policyholder the consumer information pamphlet
3 prepared by the department pursuant to paragraph (2)(b).

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

16 (5) Neutral evaluation shall be conducted as an
17 informal process in which formal rules of evidence and
18 procedure need not be observed. A party to neutral evaluation
19 is not required to attend neutral evaluation if a
20 representative of the party attends and has the authority to
21 make a binding decision on behalf of the party. All parties
22 shall participate in the evaluation in good faith.

23 (6) The insurer shall pay the costs associated with
24 the neutral evaluation.

25 (7) Upon receipt of a request for neutral evaluation,
26 the department shall refer the request to a neutral evaluator.
27 The neutral evaluator shall notify the policyholder and the
28 insurer of the date, time, and place of the neutral evaluation
29 conference. The conference may be held by telephone, if
30 feasible and desirable. The neutral evaluation conference
31 shall be held within 45 days after receipt of the request by

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1 the department.

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

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

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

15 (11) Any court proceeding related to the subject
16 matter of the neutral evaluation shall be stayed pending
17 completion of the neutral evaluation.

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

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

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1 only for purposes of determining the award of attorney's fees.

2 (14) If the policyholder declines to participate in
3 neutral evaluation requested by the insurer or declines to
4 resolve the matter in accordance with the recommendation of
5 the neutral evaluator pursuant to this section, the insurer is
6 not liable for attorney's fees under s. 627.428 or other
7 provisions of the insurance code or for extra-contractual
8 damages related to a claim for a sinkhole loss.

9 (15) A party may seek judicial review of the
10 recommendation of the neutral evaluator to determine whether
11 the recommendation is reasonable. A recommendation is
12 reasonable unless: it was procured by corruption, fraud, or
13 other undue means; there was evident partiality by the neutral
14 evaluator or misconduct prejudicing the rights of any party;
15 or the neutral evaluator exceeded the authority and power
16 granted by this section. If the court declares the
17 recommendation is not reasonable, the neutral evaluation
18 recommendation shall be vacated.

19 Section 6. This act shall take effect July 1, 2006.

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

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26 and insert:

27 A bill to be entitled

28 An act relating to sinkhole insurance; amending
29 s. 627.706, F.S.; providing for a deductible
30 amount applicable to sinkhole losses in a
31 policy for residential property insurance;

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1 amending s. 627.707, F.S.; revising references
2 to certain engineers; authorizing insurers to
3 make direct payment for certain repairs;
4 excluding insurers from liability for repairs
5 under certain circumstances; amending s.
6 627.7072, F.S.; revising references to certain
7 engineers; amending s. 627.7073, F.S.;
8 providing for the recording of sinkhole reports
9 by the clerk of court rather than the property
10 appraiser; creating s. 627.7074, F.S.;
11 providing for an alternative procedure for the
12 resolution of disputed sinkhole insurance
13 claims which is optional, nonbinding, and
14 informal; providing definitions; requiring the
15 Department of Financial Services to certify and
16 maintain a list of neutral evaluators, prepare
17 a consumer information pamphlet explaining the
18 alternative procedure, and adopt rules for the
19 implementation of an alternative procedure;
20 providing for payment of costs and attorney's
21 fees; preserving access to courts and
22 authorizing judicial review of neutral
23 evaluation recommendations; providing an
24 effective date.

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