

By Senator Fasano

11-76A-06

See HB 217

1                                   A bill to be entitled

2           An act relating to sinkhole insurance;

3           providing a short title; amending s. 627.707,

4           F.S.; authorizing insurers to make direct

5           payment for certain repairs; excluding insurers

6           from liability for repairs under certain

7           circumstances; revising the requirements for

8           reimbursement of the insurer with respect to

9           certain claims; amending s. 627.7072, F.S.;

10          revising testing standards for sinkholes;

11          requiring a report upon conclusion of testing;

12          requiring retention of certain information for

13          a specified period; authorizing the Department

14          of Environmental Protection to adopt rules for

15          the implementation of sinkhole testing and

16          reporting; amending s. 627.7073, F.S.; revising

17          a presumption relating to the findings,

18          opinions, and recommendations in sinkhole

19          reports; creating s. 627.7074, F.S.; providing

20          for an alternative procedure for the resolution

21          of disputed sinkhole insurance claims, which is

22          optional, nonbinding, and informal; providing

23          definitions; requiring the Department of

24          Financial Services to certify and maintain a

25          list of neutral evaluators, prepare a consumer

26          information pamphlet explaining the alternative

27          procedure, and adopt rules for the

28          implementation of an alternative procedure;

29          requiring insurers to provide the consumer

30          information pamphlets to policyholders upon

31          receipt of a sinkhole report or denial of a

1 claim; providing for payment of costs and  
2 attorney's fees; preserving access to courts  
3 and authorizing judicial review of neutral  
4 evaluation recommendations; providing an  
5 effective date.  
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7 Be It Enacted by the Legislature of the State of Florida:  
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9 Section 1. This act may be cited as the "Sinkhole  
10 Insurance Relief Act."

11 Section 2. Paragraph (b) of subsection (5) and  
12 subsection (7) of section 627.707, Florida Statutes, are  
13 amended to read:

14 627.707 Standards for investigation of sinkhole claims  
15 by insurers; nonrenewals.--Upon receipt of a claim for a  
16 sinkhole loss, an insurer must meet the following standards in  
17 investigating a claim:

18 (5)

19 (b) The insurer may limit its payment to the actual  
20 cash value of the sinkhole loss, not including underpinning or  
21 grouting or any other repair technique performed below the  
22 existing foundation of the building, until the policyholder  
23 enters into a contract for the performance of building  
24 stabilization or foundation repairs. After the policyholder  
25 enters into the contract, the insurer shall pay the amounts  
26 necessary to begin and perform such repairs as the work is  
27 performed and the expenses are incurred. The insurer may not  
28 require the policyholder to advance payment for such repairs.  
29 If repair has begun and the engineer selected or approved by  
30 the insurer determines that the repair cannot be completed  
31 within the policy limits, the insurer must either complete the

1 engineer's recommended repair or tender the policy limits to  
2 the policyholder without a reduction for the repair expenses  
3 incurred. The insurer may make payment directly to the persons  
4 selected by the policyholder to perform the land and building  
5 stabilization and foundation repairs. The insurer has no  
6 liability for the work performed unless it agrees to such  
7 liability in writing.

8 (7) If the insurer obtains, pursuant to s. 627.7073,  
9 written certification that there is no sinkhole loss or that  
10 the cause of the damage was not sinkhole activity, ~~and if the~~  
11 ~~policyholder has submitted the sinkhole claim without good~~  
12 ~~faith grounds for submitting such claim,~~ the policyholder  
13 shall reimburse the insurer for 50 percent of the actual costs  
14 of the analyses and services provided under ss. 627.7072 and  
15 627.7073; however, a policyholder is not required to reimburse  
16 an insurer more than \$2,500 with respect to any claim. A  
17 policyholder is required to pay reimbursement under this  
18 subsection only if the insurer, prior to ordering the analysis  
19 under s. 627.7072, informs the policyholder in writing of the  
20 policyholder's potential liability for reimbursement and gives  
21 the policyholder the opportunity to withdraw the claim.

22 Section 3. Subsection (2) of section 627.7072, Florida  
23 Statutes, is amended, and subsections (3), (4), (5), and (6)  
24 are added to that section, to read:

25 627.7072 Testing standards for sinkholes.--

26 (2) Testing shall be conducted in compliance with  
27 standards of the American Society for Testing and Materials  
28 International (ASTM), the United States Army Corps of  
29 Engineers, or the Florida Department of Transportation, or  
30 other appropriate standards, as determined by rule of the  
31 Department of Environmental Protection, to the extent

1 ~~applicable by a professional geologist shall be conducted in~~  
2 ~~compliance with the Florida Geological Survey Special~~  
3 ~~Publication No. 57 (2005).~~

4 (3)(a) All of the following may be performed in the  
5 initial phase of testing, referred to as phase I testing, by  
6 or under the supervision of the engineer or professional  
7 geologist, as appropriate:

8 1. Identification and location of all reasonably  
9 observable damage.

10 2. A geophysical survey such as a ground-penetrating  
11 radar (GPR) test, an electrical resistivity test, or other  
12 appropriate geophysical method.

13 3. Hand auger boring and push penetrometer testing in  
14 two or more locations around the foundation of the structure  
15 to determine the composition and relative strength of the  
16 nearby surface soils. The hand auger boring must penetrate to  
17 10 feet, and the push penetrometer must penetrate to at least  
18 4 feet. Laboratory tests, including, but not limited to,  
19 moisture content, organic content for probable organic-rich  
20 soils, and Attenberg limits data for clays, must be conducted  
21 on any potentially deleterious soils obtained in the hand  
22 auger borings to document a proximal cause for damage.

23 4. The excavation of one or more test pits to  
24 determine to the extent possible the thickness, bearing depth,  
25 and type of foundation system used in the construction.

26 5. Preparation of a site map showing damage locations,  
27 documentation of representative damage through the use of  
28 photographs taken at the time of initial and subsequent site  
29 reconnaissance and field testing under this section, and a  
30 written description of the nature of each damage feature.

31 6. A floor slab elevation map.

1           (b) Phase I testing may include other tests the  
2 engineer and professional geologist deem to be practical and  
3 appropriate to identify or eliminate the existence of  
4 subsurface anomalies and geological features of interest, but  
5 may not include the type of tests included under phase II.

6           (4)(a) If testing performed under subsection (3) is  
7 inconclusive as to the determination of sinkhole loss or  
8 reveals damage other than that related to a sinkhole, in the  
9 opinion of either the engineer or professional geologist, or  
10 both, or if additional testing under this section is demanded  
11 by the policyholder in writing within 60 days, the following  
12 additional tests, referred to as phase II testing, shall be  
13 performed by or under the supervision of the engineer or  
14 professional geologist:

15           1. A floor elevation survey or study to determine any  
16 variances in the floor elevation.

17           2. At least two invasive penetration test borings,  
18 consisting of standard penetration tests, to determine the  
19 composition and properties of the subsurface geologic  
20 materials surrounding the structure. Cone penetrometer tests  
21 may be used to discover the relative consistency of subsurface  
22 conditions.

23           3. Laboratory analyses of representative samples of  
24 potentially problematic materials found within the upper 20  
25 feet of soil to determine if these materials may have  
26 contributed to the damage.

27           (b) Phase II testing may include other tests the  
28 engineer and professional geologist deem to be appropriate.

29           (5) Upon conclusion of testing required by this  
30 section, the person conducting the tests must provide a  
31 written report to the insurer and policyholder. All relative

1 testing data, logs, error reports, and similar information,  
2 regardless of whether the engineer or professional geologist  
3 finds the information to be relevant, shall be retained by the  
4 engineer or professional geologists for a period of 2 years  
5 from the date of the resolution of the claim.

6 (6) The Department of Environmental Protection may  
7 adopt rules to implement this section.

8 Section 4. Paragraph (c) of subsection (1) of section  
9 627.7073, Florida Statutes, is amended to read:

10 627.7073 Sinkhole reports.--

11 (1) Upon completion of testing as provided in s.  
12 627.7072, the engineer and professional geologist shall issue  
13 a report and certification to the insurer and the policyholder  
14 as provided in this section.

15 (c) The respective findings, opinions, and  
16 recommendations of the engineer and professional geologist as  
17 to the verification or elimination of a sinkhole loss and the  
18 findings, opinions, and recommendations of the engineer as to  
19 land and building stabilization and foundation repair are  
20 conclusive, unless contrary findings and conclusions are  
21 proven by clear and convincing evidence ~~shall be presumed~~  
22 ~~correct.~~

23 Section 5. Section 627.7074, Florida Statutes, is  
24 created to read:

25 627.7074 Alternative procedure for resolution of  
26 disputed sinkhole insurance claims.--

27 (1) As used in this section:

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

30 (b) "Neutral evaluator" means a qualified engineer or  
31 a professional geologist who has completed a course of study

1 in alternative dispute resolution designed or approved by the  
2 department for use in the neutral evaluation process, who is  
3 determined to be fair and impartial, and who is attempting to  
4 resolve the dispute or claim under this section.

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

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

9 (3) Following its receipt of the report provided under  
10 s. 627.7073 or its denial of a claim for a sinkhole loss, the  
11 insurer shall notify the policyholder of his or her right to  
12 participate in the neutral evaluation program under this  
13 section. The department shall prepare a consumer information  
14 pamphlet for distribution by the insurer to policyholders. The  
15 pamphlet shall clearly describe the neutral evaluation process  
16 and include directions and forms necessary for the  
17 policyholder to request a neutral evaluation.

18 (4) Neutral evaluation is optional and nonbinding.  
19 Either the policyholder or the insurer may decline to  
20 participate. A request for neutral evaluation shall be filed  
21 with the department by the policyholder or the insurer on a  
22 form approved by the department. The request for neutral  
23 evaluation must state the reason for the request and must  
24 include an explanation of all 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 a  
27 period of 60 days following the conclusion of the neutral  
28 evaluation process or the time prescribed in s. 95.11,  
29 whichever is later.

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

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 shall participate in the evaluation in good faith.

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

8 (7) Upon receipt of a request for neutral evaluation,  
9 the department shall refer the request to a neutral evaluator.  
10 The neutral evaluator shall notify the policyholder and the  
11 insurer of the date, time, and place of the neutral evaluation  
12 conference. The conference may be held by telephone, if  
13 feasible and desirable. The neutral evaluation conference  
14 shall be held within 45 days after receipt of the request by  
15 the department.

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

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

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

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

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1           (12) 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           (13) 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 only for purposes of determining the award of attorney's fees.

16           (14) If the policyholder declines to participate in  
17 neutral evaluation requested by the insurer or declines to  
18 resolve the matter in accordance with the recommendation of  
19 the neutral evaluator pursuant to this section, the insurer  
20 shall not be liable for attorney's fees under s. 627.428 or  
21 other provisions of the insurance code or for extra  
22 contractual damages related to a claim for a sinkhole loss.

23           (15) A party may seek judicial review of the  
24 recommendation of the neutral evaluator to determine whether  
25 the recommendation was reasonable. A recommendation is  
26 reasonable unless it was procured by corruption, fraud, or  
27 other undue means; there was evident partiality by the neutral  
28 evaluator or misconduct prejudicing the rights of any party;  
29 or the neutral evaluator exceeded the authority and power  
30 granted by this subsection. If the court declares the  
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1 recommendation is not reasonable, the neutral evaluation  
2 recommendation shall be vacated.

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