

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Farkas offered the following:

2
3 **Amendment to Amendment (074037) (with title amendment)**

4 Remove line(s) 3863-3872, and insert:

5 Section 20. Subsection (1) of section 627.706, Florida
6 Statutes, is amended to read:

7 627.706 Sinkhole insurance; definitions.--

8 (1) (a) Every insurer authorized to transact property
9 insurance in this state shall make available coverage for
10 insurable sinkhole losses on any structure, including contents
11 of personal property contained therein, to the extent provided
12 in the form to which the sinkhole coverage attaches.

13 (b) A policy for residential property insurance may
14 include a deductible amount applicable to sinkhole losses equal
15 to 1 percent, 2 percent, 5 percent, or 10 percent of the policy
16 dwelling limits, with appropriate premium discounts offered with
17 each deductible amount.

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18 (c) The coverage required under this section is not
19 applicable when an insured named in the policy makes a written
20 rejection of the coverage on behalf of all insureds under the
21 policy. The rejection form shall fully advise the applicant of
22 the nature of the coverage and shall be approved by the office.
23 The heading of the form shall be in 12-point bold type and shall
24 state: "You are electing not to purchase certain valuable
25 sinkhole coverage which protects your home and other insured
26 structures, including contents, when you sign this form. Please
27 read carefully." If this form is signed by a named insured, it
28 shall be conclusively presumed that there was an informed,
29 knowing rejection of coverage on behalf of all insureds. The
30 insurer shall notify the named insured at least annually of her
31 or his options to select or reject sinkhole coverage required by
32 this section. Such notice shall be part of, and attached to, the
33 notice of premium, shall provide for a means to allow the
34 insured to request such coverage, and shall be given in a manner
35 approved by the office. Receipt of this notice does not
36 constitute an affirmative waiver of the insured's right to
37 sinkhole coverage when the insured has not signed a selection or
38 rejection form.

39 Section 21. Subsections (2), (3), (5), (6), and (9) of
40 section 627.707, Florida Statutes, are amended to read:

41 627.707 Standards for investigation of sinkhole claims by
42 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
43 loss, an insurer must meet the following standards in
44 investigating a claim:

45 (2) Following the insurer's initial inspection, the
46 insurer shall engage a professional ~~an~~ engineer or a
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47 professional geologist to conduct testing as provided in s.
48 627.7072 to determine the cause of the loss within a reasonable
49 professional probability and issue a report as provided in s.
50 627.7073, if:

51 (a) The insurer is unable to identify a valid cause of the
52 damage or discovers damage to the structure which is consistent
53 with sinkhole loss; or

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

56 (3) Following the initial inspection of the insured
57 premises, the insurer shall provide written notice to the
58 policyholder disclosing the following information:

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

61 (b) A statement of the circumstances under which the
62 insurer is required to engage a professional ~~an~~ engineer or a
63 professional geologist to verify or eliminate sinkhole loss and
64 to engage a professional ~~an~~ engineer to make recommendations
65 regarding land and building stabilization and foundation repair.

66 (c) A statement regarding the right of the policyholder to
67 request testing by a professional ~~an~~ engineer or a professional
68 geologist and the circumstances under which the policyholder may
69 demand certain testing.

70 (5)(a) Subject to paragraph (b), if a sinkhole loss is
71 verified, the insurer shall pay to stabilize the land and
72 building and repair the foundation in accordance with the
73 recommendations of the professional engineer as provided under
74 s. 627.7073, and in consultation with the policyholder, subject
75 to the coverage and terms of the policy. The insurer shall pay
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76 for other repairs to the structure and contents in accordance
77 with the terms of the policy.

78 (b) The insurer may limit its payment to the actual cash
79 value of the sinkhole loss, not including underpinning or
80 grouting or any other repair technique performed below the
81 existing foundation of the building, until the policyholder
82 enters into a contract for the performance of building
83 stabilization or foundation repairs. After the policyholder
84 enters into the contract, the insurer shall pay the amounts
85 necessary to begin and perform such repairs as the work is
86 performed and the expenses are incurred. The insurer may not
87 require the policyholder to advance payment for such repairs. If
88 repair covered by a personal lines residential property
89 insurance policy has begun and the professional engineer
90 selected or approved by the insurer determines that the repair
91 cannot be completed within the policy limits, the insurer must
92 either complete the professional engineer's recommended repair
93 or tender the policy limits to the policyholder without a
94 reduction for the repair expenses incurred.

95 (c) Upon the insurer's obtaining the written approval of
96 the policyholder and any lienholder, the insurer may make
97 payment directly to the persons selected by the policyholder to
98 perform the land and building stabilization and foundation
99 repairs. The decision by the insurer to make payment to such
100 persons does not hold the insurer liable for the work performed.

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

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

107 Section 22. Section 627.7072, Florida Statutes, is amended
108 to read:

109 627.7072 Testing standards for sinkholes.--

110 (1) The professional engineer or ~~and~~ professional
111 geologist shall perform such tests as sufficient, in their
112 professional opinion, to determine the presence or absence of
113 sinkhole loss or other cause of damage within reasonable
114 professional probability and for the professional engineer to
115 make recommendations regarding necessary building stabilization
116 and foundation repair.

117 ~~(2) Testing by a professional geologist shall be conducted~~
118 ~~in compliance with the Florida Geological Survey Special~~
119 ~~Publication No. 57 (2005).~~

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

122 627.7073 Sinkhole reports.--

123 (1) Upon completion of testing as provided in s. 627.7072,
124 the professional engineer or ~~and~~ professional geologist shall
125 issue a report and certification to the insurer and the
126 policyholder as provided in this section.

127 (a) Sinkhole loss is verified if, based upon tests
128 performed in accordance with s. 627.7072, a professional ~~an~~
129 engineer or ~~and~~ a professional geologist issue a written report
130 and certification stating:

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131 1. That the cause of the actual physical and structural
132 damage is sinkhole activity within a reasonable professional
133 probability.

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

137 3. A description of the tests performed.

138 4. A recommendation by the professional engineer of
139 methods for stabilizing the land and building and for making
140 repairs to the foundation.

141 (b) If sinkhole activity is eliminated as the cause of
142 damage to the structure, the professional engineer or ~~and~~
143 professional geologist shall issue a written report and
144 certification to the policyholder and the insurer stating:

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

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

150 3. A statement of the cause of the damage within a
151 reasonable professional probability.

152 4. A description of the tests performed.

153 (c) The respective findings, opinions, and recommendations
154 of the professional engineer or ~~and~~ professional geologist as to
155 the cause of distress to the property ~~verification or~~
156 ~~elimination of a sinkhole loss~~ and the findings, opinions, and
157 recommendations of the professional engineer as to land and
158 building stabilization and foundation repair shall be presumed
159 correct.

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160 (2) Any insurer that has paid a claim for a sinkhole loss
161 shall file a copy of the report and certification, prepared
162 pursuant to subsection (1), with the county clerk of court
163 ~~property appraiser~~, who shall record the report and
164 certification with the parcel number. The insurer shall bear the
165 cost of filing and recording the report and certification. There
166 shall be no cause of action or liability against an insurer for
167 compliance with this section. The seller of real property upon
168 which a sinkhole claim has been made shall disclose to the buyer
169 of such property that a claim has been paid and whether or not
170 the full amount of the proceeds were used to repair the sinkhole
171 damage.

172 Section 24. Effective October 1, 2006, section 627.7074,
173 Florida Statutes, is created to read:

174 627.7074 Alternative procedure for resolution of disputed
175 sinkhole insurance claims.--

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

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

179 (b) "Neutral evaluator" means a professional engineer or a
180 professional geologist who has completed a course of study in
181 alternative dispute resolution designed or approved by the
182 department for use in the neutral evaluation process, who is
183 determined to be fair and impartial.

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

186 (b) The department shall prepare a consumer information
187 pamphlet for distribution by insurers to policyholders which
188 clearly describes the neutral evaluation process and includes

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189 information and forms necessary for the policyholder to request
190 a neutral evaluation.

191 (3) Following the receipt of the report provided under s.
192 627.7073 or the denial of a claim for a sinkhole loss, the
193 insurer shall notify the policyholder of his or her right to
194 participate in the neutral evaluation program under this
195 section. Neutral evaluation supersedes the alternative dispute
196 resolution process under s. 627.7015. The insurer shall provide
197 to the policyholder the consumer information pamphlet prepared
198 by the department pursuant to paragraph (2) (b).

199 (4) Neutral evaluation is optional and nonbinding. Either
200 the policyholder or the insurer may decline to participate. A
201 request for neutral evaluation may be filed with the department
202 by the policyholder or the insurer on a form approved by the
203 department. The request for neutral evaluation must state the
204 reason for the request and must include an explanation of all
205 the issues in dispute at the time of the request. Filing a
206 request for neutral evaluation tolls the applicable time
207 requirements for filing suit for a period of 60 days following
208 the conclusion of the neutral evaluation process or the time
209 prescribed in s. 95.11, whichever is later.

210 (5) Neutral evaluation shall be conducted as an informal
211 process in which formal rules of evidence and procedure need not
212 be observed. A party to neutral evaluation is not required to
213 attend neutral evaluation if a representative of the party
214 attends and has the authority to make a binding decision on
215 behalf of the party. All parties shall participate in the
216 evaluation in good faith.

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

219 (7) Upon receipt of a request for neutral evaluation, the
220 department shall refer the request to a neutral evaluator. The
221 neutral evaluator shall notify the policyholder and the insurer
222 of the date, time, and place of the neutral evaluation
223 conference. The conference may be held by telephone, if feasible
224 and desirable. The neutral evaluation conference shall be held
225 within 45 days after receipt of the request by the department.

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

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

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

239 (11) Any court proceeding related to the subject matter of
240 the neutral evaluation shall be stayed pending completion of the
241 neutral evaluation.

242 (12) For matters that are not resolved by the parties at
243 the conclusion of the neutral evaluation, the neutral evaluator
244 shall prepare a report stating that in his or her opinion the
245 sinkhole loss has been verified or eliminated and, if verified,

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246 the need for and estimated costs of stabilizing the land and any
247 covered structures or buildings and other appropriate
248 remediation or structural repairs. The evaluator's report shall
249 be sent to all parties in attendance at the neutral evaluation
250 and to the department.

251 (13) The recommendation of the neutral evaluator is not
252 binding on any party, and the parties retain access to courts.
253 The neutral evaluator's written recommendation is admissible in
254 any subsequent action or proceeding relating to the claim or to
255 the cause of action giving rise to the claim only for purposes
256 of determining the award of attorney's fees.

257 (14) If the neutral evaluator first verifies the existence
258 of a sinkhole and, second, recommends the need for and estimates
259 costs of stabilizing the land and any covered structures or
260 buildings and other appropriate remediation or structural
261 repairs, which costs exceed the amount that the insurer has
262 offered to pay the policyholder, the insurer is liable to the
263 policyholder for up to \$2,500 in attorney's fees for the
264 attorney's participation in the neutral evaluation process. For
265 purposes of this subsection, the term "offer to pay" means a
266 written offer signed by the insurer or its legal representative
267 and delivered to the policyholder within 10 days after the
268 insurer receives notice that a request for neutral evaluation
269 has been made under this section.

270 (15) If the policyholder declines to participate in
271 neutral evaluation requested by the insurer or declines to
272 resolve the matter in accordance with the recommendation of the
273 neutral evaluator pursuant to this section, the insurer is not
274 liable for attorney's fees under s. 627.428 or other provisions

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275 of the insurance code or for extra-contractual damages related
276 to a claim for a sinkhole loss.

277 Section 25. Subsection (2) of section 877.02, Florida
278 Statutes, is amended to read:

279 877.02 Solicitation of legal services or retainers
280 therefor; penalty.--

281 (2) It shall be unlawful for any person in the employ of
282 or in any capacity attached to any hospital, sanitarium, police
283 department, wrecker service or garage, prison or court, ~~or~~ for a
284 person authorized to furnish bail bonds, investigators,
285 photographers, insurance or public adjusters, or for a general
286 or other contractor as defined in s. 489.105 or other business
287 providing sinkhole remediation services, to communicate directly
288 or indirectly with any attorney or person acting on said
289 attorney's behalf for the purpose of aiding, assisting or
290 abetting such attorney in the solicitation of legal business or
291 the procurement through solicitation of a retainer, written or
292 oral, or any agreement authorizing the attorney to perform or
293 render legal services.

294
295 ===== T I T L E A M E N D M E N T =====

296 Remove line(s) 4740-4741 and insert:
297 emergency rules; amending s. 627.706, F.S.; allowing a
298 deductible amount applicable to sinkhole losses in a
299 policy for residential property insurance; providing
300 requirements for rejection of sinkhole insurance coverage;
301 amending s. 627.707, F.S.; revising references to certain
302 engineers; authorizing insurers to make direct payment for
303 certain repairs; excluding insurers from liability for

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304 repairs under certain circumstances; amending s. 627.7072,
305 F.S.; revising references to certain engineers;
306 eliminating the requirement for certain testing
307 compliance; amending s. 627.7073, F.S.; revising
308 requirements for sinkhole reports by professional
309 engineers and professional geologists; providing for the
310 recording of sinkhole reports by the clerk of court rather
311 than the property appraiser; creating s. 627.7074, F.S.;
312 prescribing an alternative method for resolving disputed
313 sinkhole insurance claims; providing definitions;
314 prescribing procedures for invoking the alternative
315 method; providing that a recommendation by a neutral
316 evaluator is not binding on any party; providing for
317 payments of costs; requiring the insurer to pay attorney's
318 fees of the policyholder up to a specified amount under
319 certain conditions; providing that an insurer is not
320 liable for attorney's fees or for certain damages under
321 certain conditions; amending s. 877.02, F.S.; prohibiting
322 certain solicitations by contractors and other persons
323 providing sinkhole remediation services; providing
324 penalties; amending s. 627.727, F.S.; correcting a cross-