

Bill No. HB 7225, 2nd Eng.

Barcode 254182

CHAMBER ACTION

Senate

House

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Senator Campbell moved the following **amendment to amendment**
(974260):

Senate Amendment (with title amendment)

On page 104, line 16, through
page 108, line 13, 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.

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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

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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

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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

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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.
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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 137, lines 2-14, delete those lines

4

5 and insert:

6 creating s. 627.7074, F.S.; providing for
7 judicial review; providing that the
8 recommendation of the neutral evaluator is
9 presumed to be reasonable; providing
10 exceptions; requiring the Department of
11 Financial Services to submit a report to the
12 Governor and the Legislature by a specified
13 date; providing for future repeal of the
14 alternative procedures by a specified date;
15 amending s.

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