

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Legg offered the following:

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

4 Between lines 4769 and 4770, insert:

5 Section 34. Subsection (1) and paragraph (d) of subsection  
6 (2) of section 627.706, Florida Statutes, are amended to read:

7 627.706 Sinkhole insurance; definitions.--

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

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18 (2) As used in ss. 627.706-627.7074, and as used in  
19 connection with any policy providing coverage for sinkhole  
20 losses:

21 (d) "Professional engineer" means a person, as defined in  
22 s. 471.005, who has a bachelor's degree or higher in engineering  
23 with a specialty in the geotechnical engineering field. A  
24 professional ~~An~~ engineer must have geotechnical experience and  
25 expertise in the identification of sinkhole activity as well as  
26 other potential causes of damage to the structure.

27 Section 35. Subsections (2), (3), (5), (6), and (9) of  
28 section 627.707, Florida Statutes, are amended to read:

29 627.707 Standards for investigation of sinkhole claims by  
30 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole  
31 loss, an insurer must meet the following standards in  
32 investigating a claim:

33 (2) Following the insurer's initial inspection, the  
34 insurer shall engage a professional ~~an~~ engineer or a  
35 professional geologist to conduct testing as provided in s.  
36 627.7072 to determine the cause of the loss within a reasonable  
37 professional probability and issue a report as provided in s.  
38 627.7073, if:

39 (a) The insurer is unable to identify a valid cause of the  
40 damage or discovers damage to the structure which is consistent  
41 with sinkhole loss; or

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

44 (3) Following the initial inspection of the insured  
45 premises, the insurer shall provide written notice to the  
46 policyholder disclosing the following information:

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

49 (b) A statement of the circumstances under which the  
50 insurer is required to engage a professional ~~an~~ engineer or a  
51 professional geologist to verify or eliminate sinkhole loss and  
52 to engage a professional ~~an~~ engineer to make recommendations  
53 regarding land and building stabilization and foundation repair.

54 (c) A statement regarding the right of the policyholder to  
55 request testing by a professional ~~an~~ engineer or a professional  
56 geologist and the circumstances under which the policyholder may  
57 demand certain testing.

58 (5) (a) Subject to paragraph (b), if a sinkhole loss is  
59 verified, the insurer shall pay to stabilize the land and  
60 building and repair the foundation in accordance with the  
61 recommendations of the professional engineer as provided under  
62 s. 627.7073, and in consultation with the policyholder, subject  
63 to the coverage and terms of the policy. The insurer shall pay  
64 for other repairs to the structure and contents in accordance  
65 with the terms of the policy.

66 (b) The insurer may limit its payment to the actual cash  
67 value of the sinkhole loss, not including underpinning or  
68 grouting or any other repair technique performed below the  
69 existing foundation of the building, until the policyholder  
70 enters into a contract for the performance of building  
71 stabilization or foundation repairs. After the policyholder  
72 enters into the contract, the insurer shall pay the amounts  
73 necessary to begin and perform such repairs as the work is  
74 performed and the expenses are incurred. The insurer may not  
75 require the policyholder to advance payment for such repairs. If

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76 | repair covered by a personal lines residential property  
77 | insurance policy has begun and the professional engineer  
78 | selected or approved by the insurer determines that the repair  
79 | cannot be completed within the policy limits, the insurer must  
80 | either complete the professional engineer's recommended repair  
81 | or tender the policy limits to the policyholder without a  
82 | reduction for the repair expenses incurred.

83 |       (c) Upon the insurer's obtaining the written approval of  
84 | the policyholder and any lienholder, the insurer may make  
85 | payment directly to the persons selected by the policyholder to  
86 | perform the land and building stabilization and foundation  
87 | repairs. The decision by the insurer to make payment to such  
88 | persons does not hold the insurer liable for the work performed.

89 |       (6) Except as provided in subsection (7), the fees and  
90 | costs of the professional engineer or the professional geologist  
91 | shall be paid by the insurer.

92 |       (9) The insurer may engage a professional structural  
93 | engineer to make recommendations as to the repair of the  
94 | structure.

95 |       Section 36. Section 627.7072, Florida Statutes, is amended  
96 | to read:

97 |       627.7072 Testing standards for sinkholes.--

98 |       (1) The professional engineer or ~~and~~ professional  
99 | geologist shall perform such tests as sufficient, in their  
100 | professional opinion, to determine the presence or absence of  
101 | sinkhole loss or other cause of damage within reasonable  
102 | professional probability and for the professional engineer to  
103 | make recommendations regarding necessary building stabilization  
104 | and foundation repair.

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

108       Section 37. Subsections (1) and (2) of section 627.7073,  
109 Florida Statutes, are amended to read:

110       627.7073 Sinkhole reports.--

111       (1) Upon completion of testing as provided in s. 627.7072,  
112 the professional engineer or ~~and~~ professional geologist shall  
113 issue a report and certification to the insurer and the  
114 policyholder as provided in this section.

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

119       1. That the cause of the actual physical and structural  
120 damage is sinkhole activity within a reasonable professional  
121 probability.

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

125       3. A description of the tests performed.

126       4. A recommendation by the professional engineer of  
127 methods for stabilizing the land and building and for making  
128 repairs to the foundation.

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

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

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

138 3. A statement of the cause of the damage within a  
139 reasonable professional probability.

140 4. A description of the tests performed.

141 (c) The respective findings, opinions, and recommendations  
142 of the professional engineer or and professional geologist as to  
143 the cause of distress to the property verification or  
144 elimination of a sinkhole loss and the findings, opinions, and  
145 recommendations of the professional engineer as to land and  
146 building stabilization and foundation repair shall be presumed  
147 correct.

148 (2) Any insurer that has paid a claim for a sinkhole loss  
149 shall file a copy of the report and certification, prepared  
150 pursuant to subsection (1) and including the legal description  
151 of the real property and the name of the property owner, with  
152 the county clerk of court property appraiser, who shall record  
153 the report and certification ~~with the parcel number~~. The insurer  
154 shall bear the cost of filing and recording the report and  
155 certification. There shall be no cause of action or liability  
156 against an insurer for compliance with this section. The  
157 recording of the report and certification does not constitute a  
158 lien, encumbrance, or restriction on the title to the real  
159 property nor constitute a defect in the title to the real  
160 property, create any cause of action or liability against any  
161 grantor of the real property for breach of any warranty of good  
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162 title or warranty against encumbrances, or create any cause of  
163 action or liability against any title insurer that insures the  
164 title to the real property. The seller of real property upon  
165 which a sinkhole claim has been made by the seller and paid by  
166 the insurer shall disclose to the buyer of such property that a  
167 claim has been paid and whether or not the full amount of the  
168 proceeds were used to repair the sinkhole damage.

169 Section 38. Effective October 1, 2006, section 627.7074,  
170 Florida Statutes, is created to read:

171 627.7074 Alternative procedure for resolution of disputed  
172 sinkhole insurance claims.--

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

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

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

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

183 (b) The department shall prepare a consumer information  
184 pamphlet for distribution by insurers to policyholders which  
185 clearly describes the neutral evaluation process and includes  
186 information and forms necessary for the policyholder to request  
187 a neutral evaluation.

188 (3) Following the receipt of the report provided under s.  
189 627.7073 or the denial of a claim for a sinkhole loss, the  
190 insurer shall notify the policyholder of his or her right to  
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191 participate in the neutral evaluation program under this  
192 section. Neutral evaluation supersedes the alternative dispute  
193 resolution process under s. 627.7015. The insurer shall provide  
194 to the policyholder the consumer information pamphlet prepared  
195 by the department pursuant to paragraph (2)(b).

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

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

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

216 (7) Upon receipt of a request for neutral evaluation, the  
217 department shall refer the request to a neutral evaluator. The  
218 neutral evaluator shall notify the policyholder and the insurer  
219 of the date, time, and place of the neutral evaluation

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220 conference. The conference may be held by telephone, if feasible  
221 and desirable. The neutral evaluation conference shall be held  
222 within 45 days after receipt of the request by the department.

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

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

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

236 (11) Any court proceeding related to the subject matter of  
237 the neutral evaluation shall be stayed pending completion of the  
238 neutral evaluation.

239 (12) For matters that are not resolved by the parties at  
240 the conclusion of the neutral evaluation, the neutral evaluator  
241 shall prepare a report stating that in his or her opinion the  
242 sinkhole loss has been verified or eliminated and, if verified,  
243 the need for and estimated costs of stabilizing the land and any  
244 covered structures or buildings and other appropriate  
245 remediation or structural repairs. The evaluator's report shall  
246 be sent to all parties in attendance at the neutral evaluation  
247 and to the department.

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

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

267       (15) If the policyholder declines to participate in  
268 neutral evaluation requested by the insurer or declines to  
269 resolve the matter in accordance with the recommendation of the  
270 neutral evaluator pursuant to this section, the insurer is not  
271 liable for attorney's fees under s. 627.428 or other provisions  
272 of the insurance code or for extra-contractual damages related  
273 to a claim for a sinkhole loss.

274       Section 39. Subsection (2) of section 877.02, Florida  
275 Statutes, is amended to read:

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276 877.02 Solicitation of legal services or retainers  
277 therefor; penalty.--

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

291 Section 40. (1) By February 1, 2007, the Office of  
292 Insurance Regulation shall calculate a presumed factor to  
293 reflect the impact of the changes made in this act to rates  
294 filed by residential property insurers providing sinkhole loss  
295 coverage. The office shall issue a notice informing all insurers  
296 writing residential property insurance coverage of the presumed  
297 factor.

298 (2) In determining the presumed factor, the office shall  
299 use generally accepted actuarial techniques and standards in  
300 determining the expected impact on losses, expenses, and  
301 investment income of the insurer.

302 (3) The office may contract with an appropriate vendor to  
303 determine the presumed factor.

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304 (4) Each residential property insurer shall, at its next  
305 rate filing after May 1, 2007, reflect a rate change that takes  
306 into account the presumed factor determined under subsection  
307 (1).

308 (5) The sum of \$250,000 in nonrecurring funds is  
309 appropriated from the Insurance Regulatory Trust Fund in the  
310 Department of Financial Services to the Office of Insurance  
311 Regulation for the 2006-2007 fiscal year for the purposes of  
312 funding the provisions of this section.

313 Section 41. The sums of \$115,322 in recurring funds and  
314 \$10,486 in nonrecurring funds are appropriated from the  
315 Insurance Regulatory Trust Fund in the Department of Financial  
316 Services for the 2006-2007 fiscal year for the purposes of  
317 funding the provisions of this act, and two full-time equivalent  
318 positions with 59,435 in associated salary rate are authorized.

319  
320  
321 ===== T I T L E A M E N D M E N T =====

322 Remove line 284 and insert:  
323 providing penalties for a violation; amending s. 627.706, F.S.;  
324 allowing a deductible amount applicable to sinkhole losses in a  
325 policy for residential property insurance; defining the term  
326 "professional engineer"; amending s. 627.707, F.S.; revising  
327 references to certain engineers; authorizing insurers to make  
328 direct payment for certain repairs; excluding insurers from  
329 liability for repairs under certain circumstances; amending s.  
330 627.7072, F.S.; revising references to certain engineers;  
331 eliminating the requirement for certain testing compliance;  
332 amending s. 627.7073, F.S.; revising requirements for sinkhole  
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333 reports by professional engineers and professional geologists;  
334 providing for the recording of sinkhole reports by the clerk of  
335 court rather than the property appraiser; specifying limitations  
336 on the effect of recording the report and certification;  
337 creating s. 627.7074, F.S.; prescribing an alternative method  
338 for resolving disputed sinkhole insurance claims; providing  
339 definitions; prescribing procedures for invoking the alternative  
340 method; providing that a recommendation by a neutral evaluator  
341 is not binding on any party; providing for payments of costs;  
342 requiring the insurer to pay attorney's fees of the policyholder  
343 up to a specified amount under certain conditions; providing  
344 that an insurer is not liable for attorney's fees or for certain  
345 damages under certain conditions; amending s. 877.02, F.S.;  
346 prohibiting certain solicitations by contractors and other  
347 persons providing sinkhole remediation services; providing  
348 penalties; requiring the Office of Insurance Regulation to  
349 calculate a certain presumed factor on residential property  
350 insurance rates; providing requirements and procedures for  
351 determining such calculation; requiring the office to provide  
352 notice of such rate factor to insurers; requiring insurers to  
353 include such rate factor in certain rate filings; providing  
354 appropriations and authorizing additional positions and salary  
355 rates; providing effective

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