

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representative(s) Legg 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) 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 21. 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 22. 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 23. 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), with the county clerk of court
151 ~~property appraiser~~, who shall record the report and
152 certification with the parcel number. The insurer shall bear the
153 cost of filing and recording the report and certification. There
154 shall be no cause of action or liability against an insurer for
155 compliance with this section. The seller of real property upon
156 which a sinkhole claim has been made shall disclose to the buyer
157 of such property that a claim has been paid and whether or not
158 the full amount of the proceeds were used to repair the sinkhole
159 damage.

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

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162 627.7074 Alternative procedure for resolution of disputed
163 sinkhole insurance claims.--

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

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

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

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

174 (b) The department shall prepare a consumer information
175 pamphlet for distribution by insurers to policyholders which
176 clearly describes the neutral evaluation process and includes
177 information and forms necessary for the policyholder to request
178 a neutral evaluation.

179 (3) Following the receipt of the report provided under s.
180 627.7073 or the denial of a claim for a sinkhole loss, the
181 insurer shall notify the policyholder of his or her right to
182 participate in the neutral evaluation program under this
183 section. Neutral evaluation supersedes the alternative dispute
184 resolution process under s. 627.7015. The insurer shall provide
185 to the policyholder the consumer information pamphlet prepared
186 by the department pursuant to paragraph (2) (b).

187 (4) Neutral evaluation is optional and nonbinding. Either
188 the policyholder or the insurer may decline to participate. A
189 request for neutral evaluation may be filed with the department
190 by the policyholder or the insurer on a form approved by the

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191 department. The request for neutral evaluation must state the
192 reason for the request and must include an explanation of all
193 the issues in dispute at the time of the request. Filing a
194 request for neutral evaluation tolls the applicable time
195 requirements for filing suit for a period of 60 days following
196 the conclusion of the neutral evaluation process or the time
197 prescribed in s. 95.11, whichever is later.

198 (5) Neutral evaluation shall be conducted as an informal
199 process in which formal rules of evidence and procedure need not
200 be observed. A party to neutral evaluation is not required to
201 attend neutral evaluation if a representative of the party
202 attends and has the authority to make a binding decision on
203 behalf of the party. All parties shall participate in the
204 evaluation in good faith.

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

207 (7) Upon receipt of a request for neutral evaluation, the
208 department shall refer the request to a neutral evaluator. The
209 neutral evaluator shall notify the policyholder and the insurer
210 of the date, time, and place of the neutral evaluation
211 conference. The conference may be held by telephone, if feasible
212 and desirable. The neutral evaluation conference shall be held
213 within 45 days after receipt of the request by the department.

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

216 (9) For policyholders not represented by an attorney, a
217 consumer affairs specialist of the department or an employee
218 designated as the primary contact for consumers on issues

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219 relating to sinkholes under s. 20.121 shall be available for
220 consultation to the extent that he or she may lawfully do so.

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

227 (11) Any court proceeding related to the subject matter of
228 the neutral evaluation shall be stayed pending completion of the
229 neutral evaluation.

230 (12) For matters that are not resolved by the parties at
231 the conclusion of the neutral evaluation, the neutral evaluator
232 shall prepare a report stating that in his or her opinion the
233 sinkhole loss has been verified or eliminated and, if verified,
234 the need for and estimated costs of stabilizing the land and any
235 covered structures or buildings and other appropriate
236 remediation or structural repairs. The evaluator's report shall
237 be sent to all parties in attendance at the neutral evaluation
238 and to the department.

239 (13) The recommendation of the neutral evaluator is not
240 binding on any party, and the parties retain access to courts.
241 The neutral evaluator's written recommendation is admissible in
242 any subsequent action or proceeding relating to the claim or to
243 the cause of action giving rise to the claim only for purposes
244 of determining the award of attorney's fees.

245 (14) If the neutral evaluator first verifies the existence
246 of a sinkhole and, second, recommends the need for and estimates
247 costs of stabilizing the land and any covered structures or

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248 buildings and other appropriate remediation or structural
249 repairs, which costs exceed the amount that the insurer has
250 offered to pay the policyholder, the insurer is liable to the
251 policyholder for up to \$2,500 in attorney's fees for the
252 attorney's participation in the neutral evaluation process. For
253 purposes of this subsection, the term "offer to pay" means a
254 written offer signed by the insurer or its legal representative
255 and delivered to the policyholder within 10 days after the
256 insurer receives notice that a request for neutral evaluation
257 has been made under this section.

258 (15) If the policyholder declines to participate in
259 neutral evaluation requested by the insurer or declines to
260 resolve the matter in accordance with the recommendation of the
261 neutral evaluator pursuant to this section, the insurer is not
262 liable for attorney's fees under s. 627.428 or other provisions
263 of the insurance code or for extra-contractual damages related
264 to a claim for a sinkhole loss.

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

267 877.02 Solicitation of legal services or retainers
268 therefor; penalty.--

269 (2) It shall be unlawful for any person in the employ of
270 or in any capacity attached to any hospital, sanitarium, police
271 department, wrecker service or garage, prison or court, ~~or~~ for a
272 person authorized to furnish bail bonds, investigators,
273 photographers, insurance or public adjusters, or for a general
274 or other contractor as defined in s. 489.105 or other business
275 providing sinkhole remediation services, to communicate directly
276 or indirectly with any attorney or person acting on said

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277 attorney's behalf for the purpose of aiding, assisting or
278 abetting such attorney in the solicitation of legal business or
279 the procurement through solicitation of a retainer, written or
280 oral, or any agreement authorizing the attorney to perform or
281 render legal services.

282

283

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

285 Remove line(s) 4740-4741 and insert:

286 emergency rules; amending s. 627.706, F.S.; allowing a
287 deductible amount applicable to sinkhole losses in a policy for
288 residential property insurance; defining the term "professional
289 engineer"; amending s. 627.707, F.S.; revising references to
290 certain engineers; authorizing insurers to make direct payment
291 for certain repairs; excluding insurers from liability for
292 repairs under certain circumstances; amending s. 627.7072, F.S.;
293 revising references to certain engineers; eliminating the
294 requirement for certain testing compliance; amending s.
295 627.7073, F.S.; revising requirements for sinkhole reports by
296 professional engineers and professional geologists; providing
297 for the recording of sinkhole reports by the clerk of court
298 rather than the property appraiser; creating s. 627.7074, F.S.;
299 prescribing an alternative method for resolving disputed
300 sinkhole insurance claims; providing definitions; prescribing
301 procedures for invoking the alternative method; providing that a
302 recommendation by a neutral evaluator is not binding on any
303 party; providing for payments of costs; requiring the insurer to
304 pay attorney's fees of the policyholder up to a specified amount
305 under certain conditions; providing that an insurer is not

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306 | liable for attorney's fees or for certain damages under certain
307 | conditions; amending s. 877.02, F.S.; prohibiting certain
308 | solicitations by contractors and other persons providing
309 | sinkhole remediation services; providing penalties; amending s.
310 | 627.727, F.S.; correcting a cross-