

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 351 Sinkhole Loss Prevention Ordinances
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Legg
TIED BILLS: **IDEN./SIM. BILLS:** SB 742

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	21 Y, 0 N, As CS	Callaway	Cooper
2)	Military & Local Affairs Policy Committee		Fudge	Hoagland
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole may form either by the ground collapsing on itself to form a hole or by the ground settling to form a crater or indentation in the soil. Florida has more sinkholes than any other state in the nation. Most sinkholes in Florida are located in the west-central part of Florida, consisting of Marion, Orange, Sumter, Hernando, Pasco, Hillsborough, Polk, and Pinellas counties.

Florida has had a law in place since 1981 requiring insurance companies offering property coverage to provide coverage for damage resulting from sinkholes. Current law requires the insurer to cover catastrophic ground cover collapse only. This coverage does not cover structural damage due to settling or cracking of the foundation, structure, or building. Coverage for this type of sinkhole damage can be obtained by the policyholder for an additional premium.

Pasco County has two local ordinances designed to reduce property loss related to sinkholes. Although some other Florida counties have enacted local ordinances relating to sinkholes, none of the ordinances address sinkhole mitigation and prevention.

Florida law currently does not require property insurers to provide rate discounts to consumers who own structures inspected or built to withstand sinkhole loss in accordance with local ordinances and amendments to the Florida Building Code. Florida currently requires property insurers to provide rate discounts and credits for windstorm mitigation and proper enforcement of the Florida Building Code.

The bill requires the Financial Services Commission to create a building code effectiveness grading schedule that evaluates the effectiveness of sinkhole loss prevention ordinances in reducing the number of sinkholes and the severity of sinkhole losses and sets forth parameters for the schedule. Rules mandating insurance premium discounts or surcharges on personal residential property insurance based on a property's compliance with an ordinance and the grade assigned to the applicable sinkhole loss prevention ordinance must also be adopted by the Financial Services Commission.

This bill does not appear to have a fiscal impact on state or local governments. Personal residential property owners in areas of the state that have local ordinances amending the Florida Building Code that reduce the number of sinkhole claims and losses may have reduced residential property insurance rates and resulting premiums.

The bill provides an effective date of January 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.¹ A sinkhole may form either by the ground collapsing on itself to form a hole or by the ground settling to form a crater or indentation in the soil. Florida has more sinkholes than any other state in the nation.² Most sinkholes in Florida are located in the west-central part of Florida, consisting of Marion, Orange, Sumter, Hernando, Pasco, Hillsborough, Polk, and Pinellas counties.³

Florida has had a law in place since 1981 requiring insurance companies offering property coverage to provide coverage for damage resulting from sinkholes.⁴ Current law requires the insurer to cover catastrophic ground cover collapse only.⁵ This coverage does not cover structural damage due to settling or cracking of the foundation, structure, or building. Coverage for this type of sinkhole damage can be obtained by the policyholder for an additional premium.⁶

Local Ordinances Relating to Sinkholes

Pasco County has enacted two local ordinances relating to sinkholes.⁷ The permit tracking ordinance adopted on March 13, 2007 creates a system and public record to track sinkhole investigation and remediation work done on existing properties. This ordinance requires the issuance of an investigation permit when a property is tested for potential ground settlement activity. Since the adoption of the ordinance, 2,446 investigation permits have been issued. Once the testing is done, an investigation report must be filed with Pasco County containing the investigation findings and remediation recommendations. Before a property can be remediated, a remediation permit must be issued. Pasco County has issued 1,998 remediation permits since the ordinance's adoption. Once remediation repairs are complete, a remediation report must be filed with Pasco County. The remediation report must contain information detailing the remediation activities, the materials used for the repairs, the cost

¹ s. 627.706, F.S., (2008).

² University of Florida; Institute of Food and Agricultural Sciences (IFAS); *Plant Management in Florida's Waters: Sinkholes*; available at <http://aquat1.ifas.ufl.edu/guide/sinkholes.html>, viewed February 12, 2009.

³ http://www.dep.state.fl.us/geology/geologictopics/sinkhole/florida_sinkhole_poster.pdf

⁴ Section 2, chapter 81-280, Laws of Florida (L.O.F.).

⁵ s. 627.706, F.S. (2008).

⁶ Id.

⁷ Copies of the two Pasco County ordinances relating to sinkholes are on file with the Insurance, Business, & Financial Affairs Policy Committee.

of the repairs, an explanation of the differences between the remedial activity recommended in the investigation report and the remediation performed, and the amount paid by insurers for ground settlement claims on the property remediated.

The geological hazards ordinance adopted by Pasco County on February 12, 2008 prohibits the location of future buildings, structures, roadways, parking lots, and retention/detention ponds in areas where geologic hazards are determined to exist or the potential for the development of such hazards is possible and such conditions are not or cannot be remediated. It also imposes soil compaction standards during site and building development. Specifically, this ordinance requires development plans submitted to Pasco County to be accompanied by a Geotechnical/Geological Engineering Report which provides for an evaluation of the property proposed for development and imposes development and construction recommendations that include site preparation, fill placement, pavement design considerations, foundation construction requirements, minimum requirements for construction inspection and testing and recommendations for mitigation of known or found geological hazardous areas. The ordinance also imposes land construction requirements which include: compaction standards for fill placed in building pad areas, engineering certifications for the building pad areas, building permit application requirements that include a statement by an appropriate design professional that the report has been reviewed and the proposed building is appropriately designed for the conditions that exist on the proposed building area, and building inspection requirements.

Pasco County is also in the process of adopting a local technical amendment to the Florida Building Code requiring increased foundation standards for structures to include additional rebar to strengthen the ability of a foundation to withstand settlement activity. No other local government has adopted local technical amendments to the Florida Building Code enacting local building requirements relating to sinkhole mitigation or prevention.

Although some other Florida counties have enacted local ordinances relating to sinkholes, none of the ordinances address sinkhole mitigation and prevention akin to the Pasco County ordinances.⁸

Discounts and Credits Applied to Property and Casualty Insurance

Florida law currently does not require property insurers to provide rate discounts to consumers who own structures inspected or built to withstand sinkhole loss in accordance with local ordinances and amendments to the Florida Building Code. Florida currently requires property insurers to provide rate discounts and credits for windstorm mitigation and proper enforcement of the Florida Building Code.

Florida requires property insurers to provide actuarially reasonable discounts, credits, rate differentials, or reductions in deductibles to residential property insureds that install or implement windstorm damage mitigation techniques. Section 627.0629, F.S., contains the statutory requirements placed on insurers when providing discounts for wind mitigation. Wind discounts in Florida are based on loss relativities studies conducted by Applied Research Associates in 2002.

The Insurance Services Office conducts the Building Code Effectiveness Grading Schedule (BCEGS), which assesses building codes in effect in a particular community and the effectiveness of code enforcement. The BCEGS rates communities and counties from a scale of 1 (high) to 10 (low), with discounts available for communities with high ratings and surcharges applied to communities with low ratings. In Florida, BCEGS considers the degree to which communities and counties comply with the Florida Building Code. The schedule does not provide additional discounts for local and county ordinances that impose requirements more stringent than those contained in the Florida Building Code. As such, BCEGS does not include within its evaluations ordinances that provide enhanced protection against sinkholes and similar geologic conditions. A representative with the Insurance Services Office indicated to staff of the Insurance, Business, & Financial Affairs Policy Committee that BCEGS does not currently contemplate sinkholes.

⁸ For example, Levy County Ordinance Sec 50-194 requires an evaluation of geologic hazards for certain developments, with the evaluation including an identification of the sinkhole locations on photographs and plats. Other Levy County ordinances require the preservation of sinkholes located in specified areas of the county and the identification of sinkholes on a site plan for proposed minor excavation and fill operations.

Effect of Proposed Changes

The bill mandates the creation of a building code effectiveness grading schedule that evaluates the effectiveness of sinkhole loss prevention ordinances in reducing the number of sinkholes and the severity of sinkhole losses. The grading schedule will:

- Be adopted by the Financial Services Commission by rule. (The Financial Services Commission is likely to rely on personnel of the Office of Insurance Regulation to develop the rule; the OIR does not have rulemaking authority itself.);
- Be based on the effectiveness of code enforcement in each county and scientific, modeling, and engineering methodologies; and
- Evaluate ordinances no earlier than 4 years after the ordinance takes effect. (The four year time period is designed to allow for the gathering of data regarding the frequency and severity of sinkhole damage to structures that are required to be compliant with the sinkhole prevention ordinance in question.)

The commission must also adopt rules mandating insurance premium discounts or surcharges on personal residential property insurance based on a property's compliance with an ordinance and the grade assigned to the applicable sinkhole loss prevention ordinance.

B. SECTION DIRECTORY:

Section 1: creates s. 627.7063, F.S. relating to the building code effectiveness grading schedule.

Section 2: provides an effective date of January 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The building code effectiveness grading schedule is required to be based on scientific, modeling, and engineering methodologies. The Financial Services Commission through the OIR may need to procure such methodologies via contract with an outside party due to the current paucity of objective, scientific testing of the effectiveness of sinkhole preventive ordinances. However, the OIR may not need to contract out for such services during the 2009-2010 fiscal year given the bill's effective date of January 1, 2010, and the requirement that the grading schedule not be used to evaluate an ordinance until at least 4 years after it is enacted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

3. None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Personal residential property owners in areas of the state that have local ordinances amending the Florida Building Code that reduce the number of sinkhole claims and losses may have reduced residential property insurance rates and resulting premiums.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Financial Services Commission to adopt the building code effectiveness grading schedule specified in the bill by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Even though current law does not require insurance companies to consider local building requirements relating to sinkholes in property insurance rates, if the implementation of the requirements lessens an insurance company's actual loss experience, then the insurer will be required to adjust their property insurance rates to reflect the improved loss experience resulting from the local building requirements. However, this reduction may develop over time as an insurer's reduction in loss experience is realized.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Insurance, Business & Financial Affairs Policy Committee considered the bill and adopted a strike all amendment. The amendment mandated the creation of a building code effectiveness grading schedule by rule by the Financial Services Commission. The schedule is to evaluate the effectiveness of sinkhole loss prevention ordinances in reducing the number of sinkholes and severity of sinkhole losses based on scientific, engineering, and modeling methodologies. The ordinances will not be evaluated by the schedule until four years after they take effect.