



598708

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2010	.	
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The Committee on General Government Appropriations (Dean)
recommended the following:

Senate Amendment (with title amendment)

Delete line 1676
and insert:

Section 13. Effective June 1, 2010, and applying only to
insurance claims made on or after that date, subsection (1),
paragraph (b) of subsection (2), and subsections (5), (7), and
(8) of section 627.707, Florida Statutes, are amended to read:

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



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13 (1) The insurer must make an inspection of the insured's
14 premises to determine if there has been physical damage to the
15 structure which is consistent with ~~may be the result of~~ sinkhole
16 loss activity.

17 (2) Following the insurer's initial inspection, the insurer
18 shall engage a professional engineer or a professional geologist
19 to conduct testing as provided in s. 627.7072 to determine the
20 cause of the loss within a reasonable professional probability
21 and issue a report as provided in s. 627.7073, if:

22 (b) The policyholder demands testing in accordance with
23 this section or s. 627.7072 and coverage under the policy is
24 available if sinkhole loss is verified.

25 (5) (a) Subject to paragraph (b), if a sinkhole loss is
26 verified, the insurer shall pay to stabilize the land and
27 building and repair the foundation in accordance with the
28 recommendations of the professional engineer as provided under
29 s. 627.7073, with notice to ~~and in consultation with~~ the
30 policyholder, subject to the coverage and terms of the policy.
31 The insurer shall pay for other repairs to the structure and
32 contents in accordance with the terms of the policy.

33 (b) 1. After a ~~The insurer may limit its payment to the~~
34 ~~actual cash value of the sinkhole loss, not including~~
35 ~~underpinning or grouting or any other repair technique performed~~
36 ~~below the existing foundation of the building, until the~~
37 policyholder enters into a contract for the performance of
38 building stabilization or foundation repairs, the claim shall be
39 paid up to the full cost of the stabilization or foundation
40 repairs and up to full replacement cost for above-ground repairs
41 as set forth in this paragraph, less the insured's deductible.



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42 After the policyholder enters into a contract for the
43 performance of building stabilization or foundation repairs, the
44 insurer may:

45 a. Limit its initial payment to 10 percent of the estimated
46 costs to implement the building stabilization and foundation
47 repairs.

48 b. Limit its initial payment to the actual cash value of
49 the sinkhole loss for above-ground repairs to the structure.

50 2. However, after the policyholder enters into the contract
51 for the performance of building stabilization or foundation
52 repairs, the insurer shall pay the amounts necessary to ~~begin~~
53 and perform such stabilization and repairs as the work is
54 performed and the expenses are incurred. Final payments for the
55 structural or building stabilization and foundation repair work
56 shall be remitted within 30 days after such work is completed in
57 accordance with the terms of the policy and the report's
58 recommendations and after final bills or receipts have been
59 submitted to the insurer. The insurer may not require the
60 policyholder to advance payment for such repairs. If repair
61 covered by a personal lines residential property insurance
62 policy has begun and the professional engineer selected or
63 approved by the insurer determines that the repair cannot be
64 completed within the policy limits, the insurer must either
65 complete the professional engineer's recommended repair or
66 tender the policy limits to the policyholder without a reduction
67 for the repair expenses incurred.

68 (c) The policyholder shall enter into such contract for
69 repairs within 90 days after the insurance company approves
70 coverage for a sinkhole loss to prevent additional damage to the



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71 building or structure. The 90-day period may be extended for an
72 additional reasonable time period if the policyholder is unable
73 to find a qualified person or entity to contract for such
74 repairs within the 90-day period based upon factors beyond the
75 policyholder's control or if the policyholder is actively
76 seeking to retain a professional engineer or geologist as
77 provided in s. 627.7073(1)(c). This period shall be tolled if
78 either party invokes neutral evaluation.

79 (d) The stabilization and all other repairs to the
80 structure and contents must be completed within 12 months after
81 entering into the contract for repairs as described in paragraph
82 (c) unless:

83 1. There is a mutual agreement between the insurer and the
84 insured;

85 2. The stabilization and all other repairs cannot be
86 completed due to factors beyond the control of the insured which
87 reasonably prevent completion;

88 3. The claim is involved with the neutral evaluation
89 process under s. 627.7074;

90 4. The claim is in litigation; or

91 5. The claim is under appraisal.

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

98 (7) If the insurer obtains, pursuant to s. 627.7073,
99 written certification that there is no sinkhole loss ~~or that the~~



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100 ~~cause of the damage was not sinkhole activity,~~ and if the
101 policyholder has submitted the sinkhole claim without good faith
102 grounds for submitting such claim, the policyholder shall
103 reimburse the insurer for 50 percent of the actual costs of the
104 analyses and services provided under ss. 627.7072 and 627.7073;
105 however, a policyholder is not required to reimburse an insurer
106 more than \$2,500 with respect to any claim. A policyholder is
107 required to pay reimbursement under this subsection only if the
108 insurer, prior to ordering the analysis under s. 627.7072,
109 informs the policyholder in writing of the policyholder's
110 potential liability for reimbursement and gives the policyholder
111 the opportunity to withdraw the claim.

112 (8) No insurer shall nonrenew any policy of property
113 insurance on the basis of filing of claims for partial loss
114 caused by sinkhole damage or clay shrinkage as long as the total
115 of such payments does not exceed the ~~current~~ policy limits of
116 coverage for property damage for the policy in effect on the
117 date of the loss, and provided the insured has repaired the
118 structure in accordance with the engineering recommendations
119 upon which any payment or policy proceeds were based.

120 Section 14. Effective June 1, 2010, and applying only to
121 insurance claims made on or after that date, section 627.7072,
122 Florida Statutes, is amended to read:

123 627.7072 Testing standards for sinkholes.-

124 (1) The professional engineer and professional geologist
125 shall perform such tests as sufficient, in their professional
126 opinion, to determine the presence or absence of sinkhole loss
127 or other cause of damage within reasonable professional
128 probability and for the professional engineer to make



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129 recommendations regarding necessary building stabilization and
130 foundation repair.

131 (2) The professional engineer and professional geologist
132 shall perform tests under this section in accordance with
133 Florida Geological Survey Special Publication 57 to determine
134 the presence or absence of sinkhole loss or other cause of
135 damage within a reasonable professional probability.

136 Section 15. Effective June 1, 2010, and applying only to
137 insurance claims made on or after that date, section 627.7073,
138 Florida Statutes, is amended to read:

139 627.7073 Sinkhole reports.-

140 (1) Upon completion of testing as provided in s. 627.7072,
141 the professional engineer or professional geologist shall issue
142 a report and certification to the insurer, with an additional
143 copy and certification for the insurer to forward to ~~and~~ the
144 policyholder as provided in this section.

145 (a) Sinkhole loss is verified if, based upon tests
146 performed in accordance with s. 627.7072, a professional
147 engineer or a professional geologist issues a written report and
148 certification stating:

149 1. That the cause of the actual physical and structural
150 damage is sinkhole activity within a reasonable professional
151 probability.

152 2. That the analyses conducted were of sufficient scope to
153 identify sinkhole activity as the cause of damage within a
154 reasonable professional probability.

155 3. A description of the tests performed.

156 4. A recommendation by the professional engineer of methods
157 for stabilizing the land and building and for making repairs to



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158 the foundation.

159 (b) If sinkhole activity is eliminated as the cause of
160 damage to the structure, the professional engineer or
161 professional geologist shall issue a written report and
162 certification to the policyholder and the insurer stating:

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

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

168 3. A statement of the cause of the damage within a
169 reasonable professional probability.

170 4. A description of the tests performed.

171 (c) If the policyholder disagrees with the findings,
172 opinions, or recommendations of the professional engineer or
173 professional geologist engaged by the insurer, the policyholder
174 may engage a professional engineer or professional geologist, at
175 the policyholder's expense, to conduct testing under s.
176 627.7072; to render findings, opinions, and recommendations as
177 to the cause of distress to the property and the appropriate
178 method of land and building stabilization and foundation repair;
179 certify such findings, opinions, and recommendations in a report
180 that meets the requirements of this section; and forward a copy
181 of the report to the insurer. Unless the policyholder engages a
182 professional engineer or professional geologist as described in
183 this paragraph who disputes the findings of the insurer's
184 engineer or geologist, the respective findings, opinions, and
185 recommendations of the professional engineer or professional
186 geologist as to the cause of distress to the property and the



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187 findings, opinions, and recommendations of the insurer's
188 professional engineer as to land and building stabilization and
189 foundation repair as required by s. 627.707(2), shall be
190 presumed correct, and such presumption shall shift the burden of
191 proof under s. 90.304.

192 (2) (a) Any insurer that has paid a claim for a sinkhole
193 loss shall file a copy of the report and certification, prepared
194 pursuant to subsection (1), including the legal description of
195 the real property, ~~and~~ the name of the property owner, and the
196 amount paid by the insurer, with the county clerk of court, who
197 shall record the report and certification. The insurer shall
198 also file a copy of any report prepared on behalf of the insured
199 or the insured's representative which has been provided to the
200 insurer which indicates that sinkhole loss caused the damage
201 claimed. The insurer shall bear the cost of filing and recording
202 of one or more reports ~~the report~~ and certifications
203 ~~certification~~. There shall be no cause of action or liability
204 against an insurer for compliance with this section. The
205 recording of the report and certification does not:

206 1. Constitute a lien, encumbrance, or restriction on the
207 title to the real property or constitute a defect in the title
208 to the real property;

209 2. Create any cause of action or liability against any
210 grantor of the real property for breach of any warranty of good
211 title or warranty against encumbrances; or

212 3. Create any cause of action or liability against any
213 title insurer that insures the title to the real property.

214 (b) The seller of real property upon which a sinkhole claim
215 has been made by the seller and paid by the insurer shall



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216 disclose to the buyer of such property that a claim has been
217 paid, the amount of the payment, and whether or not the full
218 amount of the proceeds were used to repair the sinkhole damage.
219 The seller shall also provide to the buyer a copy of the report
220 prepared pursuant to subsection (1) and any report prepared on
221 behalf of the insured.

222 Section 16. Effective June 1, 2010, and applying only to
223 insurance claims made on or after that date, section 627.7074,
224 Florida Statutes, is amended to read:

225 627.7074 Alternative procedure for resolution of disputed
226 sinkhole insurance claims.—

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

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

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

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

237 (b) The department shall prepare a consumer information
238 pamphlet for distribution by insurers to policyholders which
239 clearly describes the neutral evaluation process and includes
240 information and forms necessary for the policyholder to request
241 a neutral evaluation.

242 (3) Neutral evaluation is available to either party if a
243 sinkhole report has been issued pursuant to s. 627.7073. Neutral
244 evaluation shall, at a minimum, determine causation, all methods



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245 of stabilization and repair both above and below ground, and
246 information necessary to carry out subsection (13). Following
247 the receipt of the report provided under s. 627.7073 or the
248 denial of a claim for a sinkhole loss, the insurer shall notify
249 the policyholder of his or her right to participate in the
250 neutral evaluation program under this section. Neutral
251 evaluation supersedes the alternative dispute resolution process
252 under s. 627.7015 but does not invalidate the appraisal clause
253 if an appraisal clause is provided by the insurance policy. The
254 appraisal process must be performed in accordance with the terms
255 of the applicable policy and the requirements of this section.

256 The insurer shall provide to the policyholder the consumer
257 information pamphlet prepared by the department pursuant to
258 paragraph (2) (b).

259 (4) Neutral evaluation is nonbinding, but mandatory if
260 requested by either party. A request for neutral evaluation may
261 be filed with the department by the policyholder or the insurer
262 on a form approved by the department. The insurance carrier must
263 request neutral evaluation within 1 year after the
264 policyholder's written notice to the insurer's claims adjuster
265 who is primarily responsible for adjusting the loss of a
266 disputed issue relating to the sinkhole claim. The request for
267 neutral evaluation must state the reason for the request and
268 must include an explanation of all the issues in dispute at the
269 time of the request. Filing a request for neutral evaluation
270 tolls the applicable time requirements for filing suit for a
271 period of 60 days following the conclusion of the neutral
272 evaluation process or the time prescribed in s. 95.11, whichever
273 is later.



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274 (5) Neutral evaluation shall be conducted as an informal
275 process in which formal rules of evidence and procedure need not
276 be observed. A party to neutral evaluation is not required to
277 attend neutral evaluation if a representative of the party
278 attends and has the authority to make a binding decision on
279 behalf of the party. All parties shall participate in the
280 evaluation in good faith. If an appraisal clause is present in
281 the policy, a remaining dispute as to the amount of the loss may
282 be resolved in the applicable policy's appraisal process in
283 compliance with the terms of such policy, by other proceedings
284 agreed to by the parties, or by trial.

285 (6) The insurer shall pay the costs associated with the
286 neutral evaluation.

287 (7)(a) Upon receipt of a request for neutral evaluation,
288 the department shall ~~provide the parties a list of certified~~
289 ~~neutral evaluators. the parties shall mutually select a neutral~~
290 ~~evaluator from the list and promptly inform the department. If~~
291 ~~the parties cannot agree to a neutral evaluator within 10~~
292 ~~business days, the department~~ allow the parties to submit
293 requests to disqualify neutral evaluators on the list for cause.
294 For purposes of this subsection, a ground for cause is required
295 to be found by the department only if:

296 1. A familial relationship exists between the neutral
297 evaluator and either party or a representative of either party
298 within the third degree;

299 2. The proposed neutral evaluator has, in a professional
300 capacity, previously represented either party or a
301 representative of either party in the same or a substantially
302 related matter;



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303 3. The proposed neutral evaluator has, in a professional
304 capacity, represented another person in the same or a
305 substantially related matter and that person's interests are
306 materially adverse to the interests of the parties;

307 4. The proposed neutral evaluator works in the same firm or
308 corporation as a person who has, in a professional capacity,
309 previously represented either party or a representative of
310 either party in the same or a substantially related matter; or

311 5. The proposed neutral evaluator has, within the preceding
312 5 years, worked as an employee of any party to the case.

313 (b) The parties shall mutually appoint a neutral evaluator
314 from the ~~department~~ list and promptly inform the department. If
315 the parties cannot agree to a neutral evaluator within 10
316 business days, the department shall appoint a neutral evaluator
317 from the department's list of certified neutral evaluators. The
318 department shall allow each party to disqualify one neutral
319 evaluator without cause. Upon selection or appointment, the
320 department shall promptly refer the request to the neutral
321 evaluator.

322 (c) Within 5 business days after the referral, the neutral
323 evaluator shall notify the policyholder and the insurer of the
324 date, time, and place of the neutral evaluation conference. The
325 conference may be held by telephone, if feasible and desirable.
326 The neutral evaluation conference shall be held within 90 ~~45~~
327 days after the receipt of the request by the department. If the
328 neutral evaluator fails to hold a neutral evaluation conference
329 in accordance with this paragraph, the neutral evaluator's fee
330 will be reduced by 10 percent unless the delay was due to
331 factors beyond the control of the neutral evaluator.



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332 (d) As used in this subsection, the term "substantially
333 related matter" means participation by the neutral evaluator on
334 the same claim, property, or any adjacent property.

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

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

342 (10) Evidence of an offer to settle a claim during the
343 neutral evaluation process, as well as any relevant conduct or
344 statements made in negotiations concerning the offer to settle a
345 claim, is inadmissible to prove liability or absence of
346 liability for the claim or its value, except as provided in
347 subsection (14) ~~(13)~~.

348 (11) Regardless of when invoked, any court proceeding
349 related to the subject matter of the neutral evaluation shall be
350 stayed pending completion of the neutral evaluation and for 5
351 days after the filing of the neutral evaluator's report with the
352 court.

353 (12) If the neutral evaluator, based upon his or her
354 professional training and credentials, is qualified only to
355 determine the causation issue or the method of repair issue, the
356 department shall allow the neutral evaluator to enlist the
357 assistance of another professional from the qualified neutral
358 evaluators list, not previously stricken by parties with respect
359 to the subject evaluation, who, based upon his or her
360 professional training and credentials, is able to provide an



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361 opinion as to the other disputed issue. Any professional who, if
362 appointed as the neutral evaluator, would be disqualified for
363 any reason listed in subsection (7) must be disqualified. In
364 addition, the neutral evaluator may use the service of other
365 experts or professionals as necessary to ensure that all items
366 in dispute are addressed in order to complete the neutral
367 evaluation. Any professional retained by the neutral evaluator
368 to provide an opinion may be disqualified for any of the reasons
369 listed in subsection (7). The neutral evaluator may request that
370 the entity that performed testing pursuant to s. 627.7072
371 perform such additional reasonable testing deemed necessary in
372 the professional opinion of the neutral evaluator to complete
373 the neutral evaluation.

374 (13)-(12) For all matters that are not resolved by the
375 parties at the conclusion of the neutral evaluation, the neutral
376 evaluator shall prepare a report stating that in his or her
377 opinion the sinkhole loss has been verified or eliminated within
378 a reasonable degree of professional probability and, if
379 verified, whether the sinkhole loss has caused structural or
380 cosmetic damage to the building and, if so, the need for and
381 estimated costs of stabilizing the land and any covered
382 structures or buildings and other appropriate remediation or
383 structural repairs that are necessary due to the sinkhole loss.
384 The evaluator's report shall be sent to all parties in
385 attendance at the neutral evaluation and to the department.

386 (14)-(13) The recommendation of the neutral evaluator is not
387 binding on any party, and the parties retain access to court.
388 The neutral evaluator's written recommendation is admissible in
389 any subsequent action or proceeding relating to the claim or to



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390 the cause of action giving rise to the claim.

391 ~~(15)~~~~(14)~~ If the neutral evaluator first verifies the
392 existence of a sinkhole and, second, recommends the need for and
393 estimates costs of stabilizing the land and any covered
394 structures or buildings and other appropriate remediation or
395 structural repairs, which costs exceed the amount that the
396 insurer has offered to pay the policyholder, the insurer is
397 liable to the policyholder for up to \$2,500 in attorney's fees
398 for the attorney's participation in the neutral evaluation
399 process. For purposes of this subsection, the term "offer to
400 pay" means a written offer signed by the insurer or its legal
401 representative and delivered to the policyholder within 10 days
402 after the insurer receives notice that a request for neutral
403 evaluation has been made under this section.

404 ~~(16)~~~~(15)~~ If the insurer timely agrees in writing to comply
405 and timely complies with the recommendation of the neutral
406 evaluator, but the policyholder declines to resolve the matter
407 in accordance with the recommendation of the neutral evaluator
408 pursuant to this section:

409 (a) The insurer is not liable for extracontractual damages
410 related to a claim for a sinkhole loss but only as related to
411 the issues determined by the neutral evaluation process. This
412 section does not affect or impair claims for extracontractual
413 damages unrelated to the issues determined by the neutral
414 evaluation process contained in this section; and

415 (b) The insurer is not liable for attorney's fees under s.
416 627.428 or other provisions of the insurance code unless the
417 policyholder obtains a judgment that is more favorable than the
418 recommendation of the neutral evaluator.



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419 (17) If the insurer agrees to comply with the neutral
420 evaluator's report, payment for stabilizing the land and
421 building and repairing the foundation shall be made in
422 accordance with the terms and conditions of the applicable
423 insurance policy.

424 Section 17. Section 627.7065, Florida Statutes, is
425 repealed.

426 Section 18. Except as otherwise expressly provided in this
427 act and except for this section, which shall take effect June 1,
428 2010, this act shall take effect July 1, 2010.

429
430 ===== T I T L E A M E N D M E N T =====

431 And the title is amended as follows:

432 Delete lines 128 - 129

433 and insert:

434 proceeding has exclusive jurisdiction; amending s.
435 627.707, F.S.; revising standards for investigation of
436 sinkhole claims by insurers; specifying requirements
437 for contracts for repairs to prevent additional damage
438 to buildings or structures; providing for
439 applicability; amending s. 627.7072, F.S.; specifying
440 requirements for tests performed by professional
441 engineers and professional geologists for certain
442 purposes; providing for applicability; amending s.
443 627.7073, F.S.; revising requirements for sinkhole
444 reports; providing for applicability; amending s.
445 627.7074, F.S.; revising requirements and procedures
446 for alternative dispute resolution of sinkhole
447 insurance claims; defining the term "substantially



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448 related matter"; providing criteria and procedures for
449 disqualification of neutral evaluators; providing
450 requirements and procedures for neutral evaluators to
451 enlist assistance from other professionals under
452 certain circumstances; providing for applicability;
453 providing effective dates.