



894358

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2010	.	
	.	
	.	
	.	

---

---

The Committee on General Government Appropriations (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 1675 and 1676

insert:

Section 13. 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:

(1) The insurer must make an inspection of the insured's



894358

13 premises to determine if there has been physical damage to the  
14 structure which is consistent with ~~may be the result of~~ sinkhole  
15 loss activity.

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

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

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

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



894358

42 building stabilization or foundation repairs the insurer may:

43 1. Limit its initial payment to 10 percent of the estimated  
44 costs to implement the building stabilization and foundation  
45 repairs; or

46 2. Limit its initial payment to the actual cash value of  
47 the sinkhole loss for structural repairs. However, after the  
48 policyholder enters into the contract for the performance of  
49 building stabilization or foundation repairs, the insurer shall  
50 pay the amounts necessary to ~~begin and~~ perform such repairs as  
51 the work is performed and the expenses are incurred. Final  
52 payments for the structural or stabilization and foundation  
53 repair work shall be remitted once such work is complete and in  
54 accordance the terms of the policy. The insurer may not require  
55 the policyholder to advance payment for such repairs. If repair  
56 covered by a personal lines residential property insurance  
57 policy has begun and the professional engineer selected or  
58 approved by the insurer determines that the repair cannot be  
59 completed within the policy limits, the insurer must either  
60 complete the professional engineer's recommended repair or  
61 tender the policy limits to the policyholder without a reduction  
62 for the repair expenses incurred.

63 (c) The policyholder shall enter into a contract for  
64 repairs within 90 days after the insurance company approves  
65 coverage for a sinkhole loss to prevent additional damage to the  
66 building or structure. The 90-day period may be extended for an  
67 additional reasonable period if the policyholder is unable to  
68 find a qualified person or entity to contract for such repairs  
69 within the 90-day period based upon factors beyond the  
70 policyholder's control.



894358

71           (d) The stabilization and all other repairs to the  
72 structure and contents must be completed within 12 months after  
73 entering into the contract for repairs as described in this  
74 section, unless there is a mutual agreement between the insurer  
75 and the insured, the stabilization and all other repairs cannot  
76 be completed due to factors beyond the control of the insured  
77 which reasonably prevent completion, the claim is involved with  
78 the neutral evaluation process under s. 627.7074, or the claim  
79 is in litigation.

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

86           (7) If the insurer obtains, pursuant to s. 627.7073,  
87 written certification that there is no sinkhole loss ~~or that the~~  
88 ~~cause of the damage was not sinkhole activity,~~ and if the  
89 policyholder has submitted the sinkhole claim without good faith  
90 grounds for submitting such claim, the policyholder shall  
91 reimburse the insurer for 50 percent of the actual costs of the  
92 analyses and services provided under ss. 627.7072 and 627.7073;  
93 however, a policyholder is not required to reimburse an insurer  
94 more than \$2,500 with respect to any claim. A policyholder is  
95 required to pay reimbursement under this subsection only if the  
96 insurer, before ~~prior to~~ ordering the analysis under s.  
97 627.7072, informs the policyholder in writing of the  
98 policyholder's potential liability for reimbursement and gives  
99 the policyholder the opportunity to withdraw the claim.



894358

100           (8) No insurer shall nonrenew any policy of property  
101 insurance on the basis of filing of claims for partial loss  
102 caused by sinkhole damage or clay shrinkage as long as the total  
103 of such payments does not exceed the ~~current~~ policy limits of  
104 coverage for property damage for the policy in effect on the  
105 date of the loss, and provided the insured has repaired the  
106 structure in accordance with the engineering recommendations  
107 upon which any payment or policy proceeds were based.

108           Section 14. Section 627.7073, Florida Statutes, is amended  
109 to read:

110           627.7073 Sinkhole reports.—

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

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

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

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

126           3. A description of the tests performed.

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



894358

129 the foundation.

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

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

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

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

141 4. A description of the tests performed.

142 (c) The respective findings, opinions, and recommendations  
143 of the professional engineer or professional geologist as to the  
144 cause of distress to the property and the findings, opinions,  
145 and recommendations of the professional engineer as to land and  
146 building stabilization and foundation repair as required by s.  
147 627.707(2) shall be presumed correct. The presumption of  
148 correctness is based upon the public policy concerns relating to  
149 the availability and affordability of sinkhole coverage for the  
150 purpose of providing consistency in claims handling and reduce  
151 the number of disputed sinkhole claims, and is therefore a  
152 presumption shifting the burden of proof under s. 90.304.

153 (2) (a) Any insurer that has paid a claim for a sinkhole  
154 loss shall record file a copy of the report and certification,  
155 prepared pursuant to subsection (1), including the legal  
156 description of the real property and the name of the property  
157 owner and the amount paid by the insurer, with the county clerk



894358

158 of court, who shall record the report and certification. The  
159 insurer shall also record a copy of any report prepared on  
160 behalf of the insured or their representative indicating that  
161 sinkhole loss caused the damage claimed. The insurer shall bear  
162 the cost of filing and recording any reports ~~the report~~ and  
163 certification. There shall be no cause of action or liability  
164 against an insurer for compliance with this section. The  
165 recording of the report and certification does not:

166 1. Constitute a lien, encumbrance, or restriction on the  
167 title to the real property or constitute a defect in the title  
168 to the real property;

169 2. Create any cause of action or liability against any  
170 grantor of the real property for breach of any warranty of good  
171 title or warranty against encumbrances; or

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

174 (b) The seller of real property upon which a sinkhole claim  
175 has been made by the seller and paid by the insurer shall  
176 disclose to the buyer of such property that a claim has been  
177 paid, the amount of the payment, and whether or not the full  
178 amount of the proceeds were used to repair the sinkhole damage.  
179 The seller shall also provide to the buyer a copy of the report  
180 prepared pursuant to subsection (1) or any report prepared on  
181 behalf of the insured.

182 Section 15. Section 627.7074, Florida Statutes, is amended  
183 to read:

184 627.7074 Alternative procedure for the resolution of  
185 disputed sinkhole insurance claims.—

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



894358

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

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

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

196 (b) The department shall prepare a consumer information  
197 pamphlet for distribution by insurers to policyholders which  
198 clearly describes the neutral evaluation process and includes  
199 information and forms necessary for the policyholder to request  
200 a neutral evaluation.

201 (3) Neutral evaluation is available to either party if a  
202 sinkhole report has been issued pursuant to s. 627.7073.

203 Following the receipt of the report provided under s. 627.7073  
204 or the denial of a claim for a sinkhole loss, the insurer shall  
205 notify the policyholder of his or her right to participate in  
206 the neutral evaluation program under this section. Neutral  
207 evaluation supersedes the alternative dispute resolution process  
208 under s. 627.7015 but does not supersede an appraisal clause  
209 provided in a policy. The insurer shall provide to the  
210 policyholder the consumer information pamphlet prepared by the  
211 department pursuant to paragraph (2) (b).

212 (4) Neutral evaluation is nonbinding, but mandatory if  
213 requested by either party. A request for neutral evaluation may  
214 be filed with the department by the policyholder or the insurer  
215 on a form approved by the department. The request for neutral





894358

216 evaluation must state the reason for the request and must  
217 include an explanation of all the issues in dispute at the time  
218 of the request. Filing a request for neutral evaluation tolls  
219 the applicable time requirements for filing suit for a period of  
220 60 days following the conclusion of the neutral evaluation  
221 process or the time prescribed in s. 95.11, whichever is later.

222 (5) Neutral evaluation shall be conducted as an informal  
223 process in which formal rules of evidence and procedure need not  
224 be observed. A party to neutral evaluation is not required to  
225 attend neutral evaluation if a representative of the party  
226 attends and has the authority to make a binding decision on  
227 behalf of the party. All parties shall participate in the  
228 evaluation in good faith.

229 (6) The insurer shall pay the costs associated with the  
230 neutral evaluation.

231 (7) Upon receipt of a request for neutral evaluation, the  
232 department shall provide the parties a list of certified neutral  
233 evaluators. The parties shall mutually select a neutral  
234 evaluator from the list and promptly inform the department. If  
235 the parties cannot agree to a neutral evaluator within 10  
236 business days, the department shall allow the parties to submit  
237 requests to disqualify neutral evaluators on the list for cause.  
238 For purposes of this subsection, grounds for cause is required  
239 to be found by the department only when:

240 (a) A familial relationship exists between the neutral  
241 evaluator and either party or their representatives within the  
242 third degree;

243 (b) The proposed neutral evaluator has, in a professional  
244 capacity, previously represented either party or their



894358

245 representatives in the same or a substantially related matter;

246 (c) The proposed neutral evaluator has, in a professional  
247 capacity, represented another person in the same or a  
248 substantially related matter and that person's interests are  
249 materially adverse to the interests of the parties; or

250 (d) The proposed neutral evaluator works in the same firm  
251 or corporation as a person who has, in a professional capacity,  
252 previously represented either party or their respective  
253 representatives in the same or a substantially related matter.

254  
255 The department shall appoint a neutral evaluator from the  
256 department list and if requested by either party, shall appoint  
257 a neutral evaluator who can determine both causation and method  
258 of repair. The department shall allow each party to disqualify  
259 one neutral evaluator without cause. Upon selection or  
260 appointment, the department shall promptly refer the request to  
261 the neutral evaluator. Within 5 business days after the  
262 referral, the neutral evaluator shall notify the policyholder  
263 and the insurer of the date, time, and place of the neutral  
264 evaluation conference. The conference may be held by telephone,  
265 if feasible and desirable. The neutral evaluation conference  
266 shall be held within ~~90~~ 45 days after the receipt of the request  
267 by the department. For purposes of this paragraph, the term  
268 "substantially related matter" means participation by the  
269 neutral evaluator on the same claim or property, or any adjacent  
270 property.

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

273 (9) For policyholders not represented by an attorney, a



894358

274 consumer affairs specialist of the department or an employee  
275 designated as the primary contact for consumers on issues  
276 relating to sinkholes under s. 20.121 shall be available for  
277 consultation to the extent that he or she may lawfully do so.

278 (10) Evidence of an offer to settle a claim during the  
279 neutral evaluation process, as well as any relevant conduct or  
280 statements made in negotiations concerning the offer to settle a  
281 claim, is inadmissible to prove liability or absence of  
282 liability for the claim or its value, except as provided in  
283 subsection (14) ~~(13)~~.

284 (11) Irrespective of when a proceeding is initiated, any  
285 court proceeding related to the subject matter of the neutral  
286 evaluation shall be stayed pending completion of the neutral  
287 evaluation and for 5 days after the filing of the neutral  
288 evaluator's report with the court.

289 (12) If the neutral evaluator, based upon his or her  
290 professional training and credentials, is qualified to determine  
291 only the causation issue or the method of repair issue, the  
292 department shall allow the neutral evaluator to enlist the  
293 assistance of another professional from the list of qualified  
294 neutral evaluators who has not previously been stricken by  
295 parties with respect to the subject evaluation, and who, based  
296 upon his or her professional training and credentials, is able  
297 to provide an opinion as to the other disputed issue. Any  
298 professional who, if appointed as the neutral evaluator would be  
299 disqualified for any reason described in subsection (7), must be  
300 disqualified. In addition, the neutral evaluator may use the  
301 service of other experts or professionals on the qualified  
302 neutral evaluators list, or may retain a contractor, as



894358

303 necessary to ensure that all items in dispute are addressed in  
304 order to complete the neutral evaluation. The neutral evaluator  
305 may request that the entity that performed testing pursuant to  
306 s. 627.7072 perform such additional reasonable testing deemed  
307 necessary in the professional opinion of the neutral evaluator  
308 to complete the neutral evaluation.

309 (13)~~(12)~~ For all matters that are not resolved by the  
310 parties at the conclusion of the neutral evaluation, the neutral  
311 evaluator shall prepare a report stating that in his or her  
312 opinion the sinkhole loss has been verified or eliminated within  
313 a reasonable degree of professional probability and, if  
314 verified, whether the sinkhole loss has caused any structural or  
315 cosmetic damage to the building and, if so, the need for and the  
316 estimated costs of stabilizing the land and any covered  
317 structures or buildings and other appropriate remediation or  
318 structural repairs necessary due to the sinkhole loss. The  
319 evaluator's report shall be sent to all parties in attendance at  
320 the neutral evaluation and to the department.

321 (14)~~(13)~~ The recommendation of the neutral evaluator is not  
322 binding on any party, and the parties retain access to court.  
323 The neutral evaluator's written recommendation is admissible in  
324 any ~~subsequent~~ action or proceeding relating to the claim or to  
325 the cause of action giving rise to the claim.

326 (15)~~(14)~~ If the neutral evaluator first verifies the  
327 existence of a sinkhole and, second, recommends the need for and  
328 estimates costs of stabilizing the land and any covered  
329 structures or buildings and other appropriate remediation or  
330 structural repairs, which costs exceed the amount that the  
331 insurer has offered to pay the policyholder, the insurer is



894358

332 liable to the policyholder for up to \$2,500 in attorney's fees  
333 for the attorney's participation in the neutral evaluation  
334 process. For purposes of this subsection, the term "offer to  
335 pay" means a written offer signed by the insurer or its legal  
336 representative and delivered to the policyholder within 10 days  
337 after the insurer receives notice that a request for neutral  
338 evaluation has been made under this section.

339 ~~(16)~~~~(15)~~ If the insurer timely agrees in writing to comply  
340 and timely complies with the recommendation of the neutral  
341 evaluator, but the policyholder declines to resolve the matter  
342 in accordance with the recommendation of the neutral evaluator  
343 pursuant to this section:

344 (a) The insurer is not liable for extracontractual damages  
345 related to a claim for a sinkhole loss but only as related to  
346 the issues determined by the neutral evaluation process. This  
347 section does not affect or impair claims for extracontractual  
348 damages unrelated to the issues determined by the neutral  
349 evaluation process contained in this section; and

350 (b) The actions of the insurer are not a confession of  
351 judgment or an admission of liability and the insurer is not  
352 liable for attorney's fees under s. 627.428 or other provisions  
353 of the insurance code unless the policyholder obtains a judgment  
354 that is more favorable than the recommendation of the neutral  
355 evaluator.

356 (17) If the insurer agrees to comply with the neutral  
357 evaluator's report, payment for stabilizing the land and  
358 building and repairing the foundation and structure shall be  
359 made in accordance with the terms and conditions of the  
360 applicable insurance policy.



361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389

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

And the title is amended as follows:

Delete line 128

and insert:

proceeding has exclusive jurisdiction; amending s.  
627.707, F.S.; revising the standards that an insurer  
must meet when investigating a sinkhole claim;  
amending s. 627.7073, F.S.; requiring that an  
additional copy of an engineer's or geologist's report  
and certification be provided to an insurer for  
forwarding to the policyholder; providing a statement  
of public policy; requiring that an insurer file a  
copy of certain reports on behalf of an insured or the  
insured's representative; requiring that the seller of  
real property upon which a sinkhole claim has been  
made disclose certain information; amending s.  
627.7074, F.S.; providing that neutral evaluation of a  
disputed sinkhole claim is available to either party  
under certain circumstances; providing that neutral  
evaluation does not supersede an appraisal clause;  
authorizing parties to submit requests to disqualify  
neutral evaluators for cause under certain  
circumstances; specifying grounds for disqualification  
of a neutral evaluator; requiring that the Department  
of Financial Services appoint a neutral evaluator  
under certain circumstances; defining the term  
"substantially related matter" for specified purposes;  
requiring that a court proceeding be stayed for a



894358

390 specified period after the filing of a neutral  
391 evaluator's report; specifying circumstances under  
392 which a neutral evaluator may enlist the assistance of  
393 another professional from the department's list of  
394 qualified neutral evaluators; clarifying requirements  
395 for a neutral evaluator's report; providing for the  
396 payment of certain costs when an insurer agrees to  
397 comply with a neutral evaluator's report; providing an