

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 416

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Sinkhole Coverage

DATE: February 5, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 416 directs Citizens to establish and manage the Citizens Sinkhole Stabilization Repair Program (Program). The bill states that the program is being created because the public interest is served by the performance of sinkhole repairs. All covered sinkhole loss claims made on a Citizens policy will be governed by the Program as of March 31, 2015.

Under the Program, stabilization repair contractors are approved by Citizens to participate in the program if they meet statutory requirements.

Each covered sinkhole loss claim is submitted to the approved stabilization contractors who have the opportunity to submit itemized offers to Citizens to perform the stabilization repairs recommended in the engineering report. Citizens provides a list of all contractors who offered to perform the repair to the policyholder. The policyholder has 30 days to select a listed contractor. If the policyholder does not make a selection within 30 days, Citizens shall select the contractor based on quality, cost-effectiveness, and other criteria. The stabilization repair contractor must provide a warranty of at least 5 years on repairs. Citizens must also provide a warranty of at least 5 years that is effective if the stabilization repair contractor cannot provide a remedy required under its warranty.

The policyholder's sole remedy is the specific performance of sinkhole stabilization repairs in a dispute with Citizens over the method or extent of stabilization repairs. Citizens' liabilities under the Program are limited to the policyholder's policy limits.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the Program and submit a report to the President of the Senate, Speaker of the House of Representatives, and the Governor by January 1, 2017.

## II. Present Situation:

### Sinkhole Insurance

Insurers offering property insurance must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents.<sup>1</sup> Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs.<sup>2</sup> Insurance companies must also provide coverage for catastrophic ground cover collapse.<sup>3</sup> Insurers may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy.<sup>4</sup> An insurer may require a property inspection prior to issuing sinkhole loss coverage.<sup>5</sup> Residential property insurance policies may include deductibles applicable to sinkhole losses of 1 percent, 2, percent, 5 percent, or 10 percent of the policy dwelling limits and must provide a corresponding premium discount with each deductible amount.<sup>6</sup> All Citizens sinkhole loss policies, however, have a 10 percent deductible.<sup>7</sup>

Sinkhole coverage is payable when a “sinkhole loss” occurs.<sup>8</sup> A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity.<sup>9</sup> Five distinct types of damage constitute structural damage, and each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry.<sup>10</sup> “Sinkhole activity” is the settlement or systematic weakening of the earth supporting the covered building that results from contemporaneous movement or raveling of soils, sediments, or rock into subterranean voids created by the effect of water on a limestone or similar rock formation.<sup>11</sup> Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage that is caused by sinkhole activity.

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<sup>1</sup> s. 627.706(1)(b), F.S.

<sup>2</sup> See s. 627.706(5), F.S. Contents coverage is also available and, if included, paid in accordance with policy terms

<sup>3</sup> s. 627.706(1)(a), F.S. Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable. A catastrophic ground cover collapse occurs when geological activity causes the abrupt collapse of the ground cover, a depression in the ground cover clearly visible to the naked eye, structural damage to the covered building and its foundation, and the insured structure being condemned and ordered to be vacated by the governmental entity authorized to give such an order.

<sup>4</sup> s. 627.706(1)(c), F.S.

<sup>5</sup> s. 627.706(a)(b), F.S.

<sup>6</sup> See *id.*

<sup>7</sup> Citizens Property Insurance Corporation, *Sinkhole Loss Coverage Frequently Asked Questions for Policyholders*, pg. 5. [https://www.citizensfla.com/shared/faqs/SinkholeFAQs\\_for\\_Consumers.pdf](https://www.citizensfla.com/shared/faqs/SinkholeFAQs_for_Consumers.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>8</sup> See s. 627.707(5), F.S.

<sup>9</sup> s. 627.706(2)(j), F.S.

<sup>10</sup> s. 627.706(2)(k), F.S.

<sup>11</sup> s. 627.706(2)(i), F.S.

Sinkhole insurance claims increased substantially both in number and cost over the past 2 decades and most dramatically from 2009 to 2011.<sup>12</sup> According to data submitted in 2011 by 211 property insurers to the Office of Insurance Regulation (OIR), the insurers' total reported claims increased from 2,360 in 2006 to 6,694 in 2010, totaling 24,671 claims throughout that period.<sup>13</sup> Total sinkhole claim costs for these insurers amounted to approximately \$1.4 billion for the same period.<sup>14</sup>

The 2011 Legislature enacted legislation in (CS/CS/CS/SB 408) to address the large increases in sinkhole policyholder premiums and losses.<sup>15</sup> The 2011 reform bill changed the definition of structural damage that is used to determine if a sinkhole loss occurred, revised the process for investigating sinkhole losses, and enacted a number of reforms aimed at reducing fraud and unnecessary costs related to sinkhole loss coverage.

### **Investigation of Sinkhole Claims**

The 2011 legislative sinkhole reforms substantially revised the statutory process for investigating sinkhole claims in s. 627.707, Florida Statutes.<sup>16</sup> The process requires the insurer to determine whether the building has incurred structural damage that has been caused by sinkhole activity.<sup>17</sup> Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The new process is as follows:

*Initial Inspection & Structural Damage Determination:* Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder's premises to determine if there has been structural damage which may be the result of sinkhole activity.<sup>18</sup> This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.

*Sinkhole Testing:* The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss.<sup>19</sup> If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.<sup>20</sup>

*Notice to the Policyholder:* The insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made)

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<sup>12</sup> See Office of Insurance Regulation, *Report on Review of the 2010 Sinkhole Data Call*, (Nov. 8, 2010).

[http://www.flair.com/siteDocuments/Sinkholes/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.flair.com/siteDocuments/Sinkholes/2010_Sinkhole_Data_Call_Report.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>13</sup> See *id.* at pg. 5.

<sup>14</sup> See *id.*

<sup>15</sup> Ch. 2001-39, L.O.F.

<sup>16</sup> See fn. 15.

<sup>17</sup> s. 627.707(1), F.S.

<sup>18</sup> See *id.*

<sup>19</sup> s. 627.707(2), F.S.

<sup>20</sup> See *id.*

and a statement of the circumstances under which the insurer must conduct sinkhole testing.<sup>21</sup> The policyholder must also be notified of his or her right to demand sinkhole testing and the circumstances under which the policyholder may incur costs associated with testing.<sup>22</sup>

*Authorization to Deny Sinkhole Claim:* An insurer may deny a claim upon a determination that there is no sinkhole loss.<sup>23</sup>

*Policyholder Demand for Sinkhole Testing:* The policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denied the claim without performing sinkhole testing and coverage would be available<sup>24</sup> if a sinkhole loss is confirmed).<sup>25</sup> However, a policyholder requesting such testing must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500.<sup>26</sup> If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.<sup>27</sup>

### **Payment of Sinkhole Claims**

If a covered building suffers a sinkhole loss or catastrophic ground cover collapse, the insured must repair such damage in accordance with the insurer's professional engineer's recommended repairs.<sup>28</sup> However, if repairs cannot be completed within policy limits, the insurer has the option to either pay to complete the recommended repairs or tender policy limits without a reduction for any repair expenses already incurred.<sup>29</sup> The insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs.<sup>30</sup>

The contract for below-ground repairs must be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and must be entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss.<sup>31</sup> The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation.<sup>32</sup>

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<sup>21</sup> s. 627.707(3), F.S.

<sup>22</sup> See *id.*

<sup>23</sup> s. 627.707(4)(a), F.S.

<sup>24</sup> The claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss.

<sup>25</sup> s. 627.707(4)(b), F.S.

<sup>26</sup> s. 627.707(4)(b)2., F.S.

<sup>27</sup> s. 627.707(4)(b)3., F.S.

<sup>28</sup> s. 627.707(5), F.S.

<sup>29</sup> See *id.*

<sup>30</sup> s. 627.707(5)(a), F.S.

<sup>31</sup> See s. 627.707(5)(b), F.S.

<sup>32</sup> See *id.*, and s. 627.707(5)(d), F.S.

The two most commonly recommended stabilization techniques are grouting and underpinning.<sup>33</sup> Under the grouting procedure, a grout mixture (either cement-based or a chemical resin that expands into foam) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling.<sup>34</sup> Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building's foundation.<sup>35</sup> One end of the steel pipe connects to the foundation of the structure with the other end resting on solid limestone. Underpinning repairs, when performed, are usually combined with grouting.

### **Sinkhole Claims – Citizens Property Insurance Corporation**

The number of Citizens Property Insurance Corporation (Citizens) sinkhole claims is dropping in the aftermath of the 2011 sinkhole reforms. Citizens' sinkhole claim activity had increased from 1,590 claims in 2009 to 4,605 in 2011.<sup>36</sup> After the legislative reforms, new Citizens sinkhole claims dropped to 2,386 in 2012 and a projected 900 claims in 2013, an estimated 80 percent drop in claims from 2011.<sup>37</sup>

Citizens' sinkhole claim activity from 2009 to 2013 is concentrated in Hernando, Hillsborough, Pasco, and Pinellas counties.<sup>38</sup> Miami-Dade, Broward, and Palm Beach counties also produced a significant number of sinkhole claims and had generally higher percentages of claims filed on sinkhole policies.<sup>39</sup> Approximately 90 percent of sinkhole claim litigation is from claims on properties located in Hernando, Pasco, and Hillsborough counties. A sample of 204 sinkhole claims in litigation by Citizens on August 31, 2013, indicated that over 56 percent of such claims are in litigation over issues related to Citizens efforts to repair the damaged property.

Though the costs associated with Citizens sinkhole loss claims has decreased, such claims continue to negatively affect the financial stability of Citizens and private market insurers.<sup>40</sup> Increased sinkhole claim losses has often made residential property insurance increasingly unaffordable or unavailable for consumers.

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<sup>33</sup> Citizens Property Insurance Corporation, Sinkhole Repairs: Underpinning and Grouting, (Oct. 30, 2012). <https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf> (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> Citizens Property Insurance Corporation, *Litigation Analysis*, pg. 8. (October 2013). <http://miamiherald.typepad.com/files/corrected-citizens-litigation-analysis---final---oct-11-2013.pdf> (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>37</sup> See *id.*

<sup>38</sup> The total number of sinkhole claims in these counties from January 1, 2009 to August 31, 2013 are: Hernando County (4,947), Pasco County (2,817), Hillsborough (2,180), Pinellas (1,039). The percentage of sinkhole policies in each county that experienced a claim during this period is 3 percent in Hernando County, 6 percent in Pasco County, 5 percent in Hillsborough County, and 10 percent in Pinellas County.

<sup>39</sup> Miami-Dade had 419 sinkhole claims, but 19 percent of sinkhole policies in that county had a sinkhole claim from January 1, 2009 to August 31, 2013. Broward County had 291 claims on 14 percent of sinkhole policies and Palm Beach County had 114 claims on 10% of sinkhole policies.

<sup>40</sup> Citizens, in its 2014 Rate Filing Kit, detailed that the indicated rate change for sinkhole coverage was for an increase of 451 percent in Hernando County, 177 percent in Pasco County, and 235 percent in Hillsborough County. [http://static-lobbytools.s3.amazonaws.com/press/59997\\_citizens\\_2014\\_rate\\_kit.pdf](http://static-lobbytools.s3.amazonaws.com/press/59997_citizens_2014_rate_kit.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

The Citizens Board of Governors considered the creation of a sinkhole stabilization managed repair program at its December 12, 2013 meeting.<sup>41</sup> The program would be similar to the program that would be created if the bill becomes law, with the primary difference being that Citizens policyholders would not be required to participate. Citizens solicited sinkhole repair contractors who would participate in the managed repair program through an initial Invitation to Bid (ITB No. 13-0020) and subsequently issued an additional Invitation to Bid (ITB No. 13-0028) for additional vendors dated January 8, 2014. Citizens' staff recommended that the Citizens' Claims Committee approve and recommend to the Board of Governors that Citizens' staff pursue contracts with vendors that would allow the implementation of a sinkhole stabilization managed repair program.<sup>42</sup> Such contracts would not exceed \$50 million. Citizens' staff noted that the vendor contracts would not cause additional expenses because vendors will be paid through the claims indemnity process.<sup>43</sup>

In an effort to settle sinkhole claim disputes over the method of sinkhole repairs, Citizens began in December 2013 sending letters to hundreds of its policyholders who are disputing the repair recommendations on their sinkhole claims.<sup>44</sup> The letters are targeted to policyholders who have a confirmed sinkhole loss for which the professional engineer who verified a sinkhole loss has recommended grouting repairs but not underpinning. The letters encourage policyholders to have the necessary repair work completed in accordance with the engineer's recommendations. Citizens is also encouraging policyholders to resolve differing engineering opinions through the neutral evaluation process in s. 627.7074, F.S. Citizens estimates that of its 2,100 disputed sinkhole claims, 1,329 deal with disagreements over repair methods.<sup>45</sup>

### Neutral Evaluation

Neutral evaluation is an alternative procedure in s. 627.7074, F.S., for the resolution of disputed sinkhole insurance claims for which a sinkhole testing report<sup>46</sup> has been issued. The neutral evaluator must have sufficient professional training and credentials to render opinions as to causation, and if applicable, the recommended method of repair and the estimated cost of such repairs.<sup>47</sup> Neutral evaluation is nonbinding, but the insurer and policyholder must participate if either party requests it.<sup>48</sup> At a minimum, neutral evaluation must determine the cause of the loss, all methods of stabilization and repair both above and below ground, the costs for stabilization

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<sup>41</sup> Citizens Property Insurance Corporation, Action Item Summary: Sinkhole Stabilization Managed Repair Program (Dec. 13, 2013). [https://www.citizensfla.com/bnc\\_meet/docs/500/05Ab\\_AI\\_Sinkhole\\_MRP\\_12\\_13\\_13.pdf](https://www.citizensfla.com/bnc_meet/docs/500/05Ab_AI_Sinkhole_MRP_12_13_13.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> Citizens Property Insurance Corporation, *Citizens Chairman: Settlement Proposal Benefits Consumers*, (Press Release Dated Dec. 12, 2013). <https://www.citizensfla.com/shared/press/articles/135/12.12.2013.pdf> (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>45</sup> See *id.*

<sup>46</sup> Section 627.7073, F.S., contains the statutory standards for a sinkhole report. A sinkhole report must be based on tests performed by a professional engineer and professional geologist that, as required by s. 627.7072, F.S., are sufficient to determine the presence or absence of sinkhole loss and allow the professional engineer to make recommendations regarding necessary building stabilization and foundation repair. The sinkhole report must contain the opinion of the professional engineer or professional as to whether a sinkhole loss is present, and if so, the recommendation of the professional engineer of methods for stabilizing the land and repairing the foundation.

<sup>47</sup> See s. 627.7074(1)(a), F.S., and s. 627.7074(11), F.S.

<sup>48</sup> Section 627.7074(4), F.S.

and all repairs, and the information necessary to issue a report of the neutral evaluator's findings and recommendations.<sup>49</sup>

Neutral evaluation is an informal process in which formal rules of evidence and procedure need not be observed.<sup>50</sup> The insurer or the policyholder request neutral evaluation by sending written notice to the Department of Financial Services (DFS).<sup>51</sup> The DFS then provides a list of certified neutral evaluators to the parties who have 14 days to select a neutral evaluator.<sup>52</sup> If the parties cannot agree to a neutral evaluator, the Department makes the selection. Once a neutral evaluator is selected, within 14 days he or she must notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference.<sup>53</sup>

Once a neutral evaluator has been selected by the parties or appointed by the DFS, the insurer submits the sinkhole testing report to the neutral evaluator and the policyholder submits all reports initiated by the policyholder or an agent of the policyholder that either confirm sinkhole loss or dispute the results of another report.<sup>54</sup> The neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated.<sup>55</sup> At the conclusion of neutral evaluation, the neutral evaluator must prepare a report describing all matters that are the subject of neutral evaluation, including whether a sinkhole loss has occurred, and, if so, the estimated costs of stabilizing the land and any covered building and other appropriate repairs.<sup>56</sup> The recommendation of the neutral evaluator and his or her testimony must be admitted in any litigation relating to the insurance claim.<sup>57</sup> If the insurer timely complies with the recommendation of the neutral evaluator, the insurer is not liable for extra-contractual damages related to issues determined under neutral evaluation.<sup>58</sup>

### III. Effect of Proposed Changes:

#### **Citizens Sinkhole Stabilization Repair Program [s. 627.351(6)(ff), F.S.]**

**Section 1** directs Citizens to establish the Citizens Sinkhole Stabilization Repair Program (Program). The bill states that creating the Program safeguards the public's health, safety, and welfare and that it is in the public interest that sinkhole loss claims be resolved through the performance of sinkhole repairs. All covered sinkhole loss claims made on a Citizens policy will be governed by the Program as of March 31, 2015. The Program must be managed by Citizens.

Under the Program, stabilization repair contractors are approved by Citizens to participate in the program if they meet statutory requirements. Approved stabilization repair contractors must contract with Citizens to perform stabilization repairs based on line-item prices developed by Citizens that reflect market prices for sinkhole stabilization activities.

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<sup>49</sup> s. 627.7074(2), F.S.

<sup>50</sup> s. 627.7074(5), F.S.

<sup>51</sup> s. 627.7074(4), F.S.

<sup>52</sup> s. 627.7074(7), F.S.

<sup>53</sup> See *id.*

<sup>54</sup> See s. 627.7074(2) and (5), F.S.

<sup>55</sup> s. 627.7074(5), F.S.

<sup>56</sup> s. 627.7074(12), F.S.

<sup>57</sup> s. 627.7074(13), F.S.

<sup>58</sup> s. 627.7074(15), F.S.

Each covered sinkhole loss claim is submitted to the approved stabilization contractors who have the opportunity to submit itemized offers to Citizens to the stabilization repairs recommended in the engineering report. Citizens then provides a list of all contractors that submitted a bid to the policyholder. The policyholder has 30 days to select a listed contractor. If the policyholder does not make a selection within 30 days, Citizens shall select the contractor based on quality, cost-effectiveness, and other criteria. If an approved stabilization repair contractor does not offer to perform repairs within policy limits, Citizens may resubmit the loss to the program two additional times or pay up to the policy limits to the policyholder.

Repairs must be warranted by the stabilization repair contractor for at least 5 years. Citizens must also provide a warranty for repairs that is effective if the contractor is unable to honor its warranty.

The policyholder's sole remedy is the specific performance of sinkhole stabilization repairs in a dispute with Citizens over the method or extent of stabilization repairs. Citizens' liabilities under the Program are limited to the policyholder's policy limits.

Citizens must pay for repairs to the structure and contents not governed by the Program (repairs other than sinkhole stabilization repairs such as grouting or underpinning) in accordance with the terms of the insurance policy

The following provides a detailed explanation of the provisions of the Program:

**Prohibition against Requiring Citizens Policyholders to Advance Sinkhole Repair Costs [s. 627.351(6)(ff)2.a., F.S.]**

Citizens is prohibited from requiring a policyholder from advancing the cost of sinkhole repairs.

**Stabilization Repair Contractor - Qualification Requirements [s. 627.351(6)(ff)2.b., F.S.]**

Each stabilization repair contractor approved by Citizens must be qualified based on the following criteria:

- *Experience* - Experience in stabilizing sinkhole activity pursuant to requirements established by Citizens;
- *Certification* - Certification as a contractor under s. 489.113(1), F.S.;
- *Bonding* - Demonstrating the capacity to be bonded and actually providing required performance, surety, or other bonds, which may be supplemented by additional requirements;
- *Insurance* - Demonstrating the ability to meet insurance coverage required by Citizens, including commercial general liability and workers' compensation insurance;
- *Drug-Free* - Maintaining a valid drug-free workplace program; and
- Other requirements established by Citizens.



**Performance of Repairs Under Contract; Contractor Responsibility [s. 627.351(6)(ff)2.c., F.S.]**

Stabilization contractors must conduct repairs under a contract with Citizens that is not subject to the procurement requirements of s. 287.057 and s. 627.351(6)(e), F.S. The contractor is solely responsible for the performance of all necessary stabilization repairs specified in the engineering report.

**Stabilization Repair Contract [s. 627.351(6)(ff)2.d., F.S.]**

Citizens must develop a standard stabilization repair contract that requires:

- *Payment Terms* - Payment of the stabilization repair contractor based on line-item prices developed by Citizens that reasonably reflect actual market prices for sinkhole stabilization activities.
- *Bonding Requirements* - The stabilization repair contractor to post a payment bond in favor of Citizens for each project assigned and to post a performance bond in favor of Citizens in the amount of the total cost of all fixed-price repairs annually awarded to the contractor.
- *Warranty Requirements* - The stabilization repair contractor must provide a warranty of at least 5 years to the policyholder. Citizens must also provide the policyholder a warranty that covers repairs provided by the stabilization repair contractor at least 5 years if the contractor is unable to provide a remedy required under the warranty it provided the policyholder.
- *Engineer Monitoring of Repairs* - The engineer must monitor the performance of stabilization repairs and confirm their completion and that no further repairs are required.
- *Performance of Additional Needed Repairs* - The stabilization repair contract must perform any additional repairs found necessary by the engineer. If repairs can be completed within policy limits, the contractor must complete the repairs and will be reimbursed pursuant to Citizens' line-item pricing.

**Process for Selection of Stabilization Repair Contractors [s. 627.351(c)(ff)2.e., F.S.]**

Citizens must establish a process for the selection of a stabilization repair contractor that includes:

- *Contractors Offers to Perform Repairs* - An opportunity for all stabilization repair contractors within the Citizens stabilization repair pool to submit an offer to perform the repairs recommended in the engineering report. The offer must include an itemized statement of work.
- *List of Contractors Offering to Repair* - Citizens must review the contractors' offers and provide the policyholder with a list of all stabilization repair contractors that submitted an offer. .
- *Selection of the Contractor* - The policyholder has 30 days to select a stabilization repair contractor. If the policyholder does not select a contractor within 30 days Citizens does based on quality, cost-effectiveness, and other criteria.
- *Resubmission of Property to Program* - If no contractors offer to perform stabilization repairs or all such offers exceed the policy limit, Citizens may resubmit the property to the repair process. If the property is entered into the selection process 3 times and no stabilization repair contractor submits an offer to repair within policy limits, Citizens must pay for repairs

that cost greater than the policy limit or may pay the policyholder an amount up to the policy limits on the structure.

**Citizens Liability under the Sinkhole Stabilization Repair Program [s. 627.351(6)(ff)3, 4, and 5., F.S.]**

The bill limits Citizens legal responsibilities under the Program. Citizens is not responsible for serving as a stabilization repair contractor. Citizens' obligations under the Program are not an election to repair by Citizens and do not create a new contractual relationship between a policyholder and Citizens.

Citizens is not obligated to the policyholder for more than the policy limits.

**Sinkhole Loss Repairs Other Than Stabilization Repairs [s. 627.351(6)(ff)5., F.S.]**

Citizens must pay for repairs other than stabilization repairs to the structure and contents in accordance with the terms of the insurance policy. All repairs other than stabilizing the land and structure and repairing the damaged structure will be governed by this provision.

**Sinkhole Stabilization Repairs in Excess of Policy Limits [s. 627.351(6)(ff)6., F.S.]**

If the professional engineer retained by Citizens determines that stabilization repairs cannot be conducted within policy limits, Citizens must either pay for such repairs or tender the policy limits to the policyholder.

**Specific Performance of Repairs Policyholder's Sole Remedy [s. 627.351(6)(ff)7., F.S.]**

If a dispute arises between a policyholder and Citizens regarding the type of stabilization repairs or their extent, the policyholder's sole remedy is the specific performance of repairs.

**Repairs Other Than Sinkhole Stabilization [s. 627.351(6)(ff)5. and 9., F.S.]**

Citizens must pay for repairs other than sinkhole stabilization to the structure and contents in accordance with the terms of the policyholder's insurance policy. The Program statute does not prohibit Citizens from establishing managed repair programs for other repairs to the structure in accordance with the terms of the insurance policy.

**The Program Supersedes the Statutory Process for the Investigation and Payment of Sinkhole Loss Claims [s. 627.351(6)(ff)11., F.S.]**

The Program statute supersedes the provisions of s. 627.707(5)(a)-(d), F.S., which contain the statutory criteria for the investigation and payment of sinkhole loss claims.

**Neutral Evaluation [s. 627.351(6)(ff)8. and 10., F.S.]**

The bill specifies that neutral evaluation is available under the program when Citizens denies a sinkhole loss claim. The scope of neutral evaluation under the program is limited, however, to whether sinkhole activity is present on the property and whether a sinkhole loss has occurred.

Under current law, the neutral evaluator is tasked with determining the cause of the loss as well as the proper method of repair and the costs for stabilization and all repairs.

As under current law, neutral evaluation is mandatory if requested by either party to the insurance contract, but the report of the neutral evaluator is not binding on the parties. The bill specifies that the neutral evaluator may not participate in the repairs related to the insurance claim and may not have a financial interest in the claim or in any business involved in repairs for the claim.

### **Citizens Reports on Residential Sinkhole Loss Coverage [s. 627.351(6)(ee), F.S.]**

Citizens must submit a report to the OIR detailing the requests it receives for residential sinkhole loss coverage. The report must be submitted at least once every 6 months. Citizens must report the number of requests for residential sinkhole loss coverage received, the number of sinkhole loss coverage requests accepted or declined, and Citizens' reasons for declining requests for residential sinkhole coverage.

### **OPPAGA Analysis of Program**

**Section 2** requires OPPAGA to review the Program and submit a report to the Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives. The report must:

- Analyze policyholder satisfaction with the Program and the sufficiency of consumer protections.
- Analyze the timeliness of stabilization repairs and compare Citizens' sinkhole-related loss costs under the program with loss costs prior to the Program.
- Evaluate whether disputes between stabilization repair contractors and policyholders are resolved in an effective and timely manner.
- Evaluate whether litigation of sinkhole claims and associated costs are increasing or decreasing, and the causes of such litigation.
- Evaluate the cost-effectiveness of allowing a third-party administrator to manage the program.

### **Effective Date**

**Section 3** provides an effective date of July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Citizens policyholders only remedy under this bill will be limited to the specific performance of sinkhole repairs. Citizens' policyholders may benefit from the quick performance of repairs. If sinkhole loss costs are reduced by the program, premium increases for Citizens sinkhole insurance may be reduced.

**C. Government Sector Impact:**

Citizens' staff has recommended to the Citizens Board of Governors the pursuit of vendors to serve as sinkhole repair contractors for the purpose of establishing a sinkhole stabilization managed repair program. Vendors would be paid through the claim indemnity process (i.e. for repairs performed) and thus Citizens staff does not consider the vendor contracts an additional expense to Citizens.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following section of the Florida Statutes: 627.351

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 4, 2014:**

- Requires approved contractors to perform repairs based on line-item prices developed by Citizens that reasonably reflect market prices instead of on a fixed price bid submitted by the contractor.
- Requires Citizens to provide a 5 year warranty to the policyholder for stabilization repairs that is payable if the contractor is unable to honor its 5 year warranty to the policyholder.

- Requires Citizens to pay to perform necessary repairs that exceed policy limits or tender the policy limit without reduction for incomplete repairs that have already been performed.
- Allows the policyholder to select a contractor from among all qualified contractors that offer to perform the repair, rather than permitting Citizens to determine which bids are submitted to the policyholder.
- Specifies that neutral evaluation is available under the Program when Citizens denies a claim for sinkhole loss. Limits the issue to be determined under neutral evaluation to whether a sinkhole loss has occurred. Under current law, neutral evaluation is available to contest causation or the method of repair, and the neutral evaluator must make a recommendation as to the proper method of repair when a sinkhole loss is present.
- Requires OPPAGA to submit a report evaluating the Program to the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.

B. Amendments:

None.