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LEGISLATIVE ACTION

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

1 **Senate Substitute for Amendment (894358) (with title**
2 **amendment)**

3
4 Between lines 1675 and 1676
5 insert:

6 Section 13. Subsection (1), paragraph (b) of subsection
7 (2), and subsections (5), (7), and (8) of section 627.707,
8 Florida Statutes, are amended to read:

9 627.707 Standards for investigation of sinkhole claims by
10 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
11 loss, an insurer must meet the following standards in
12 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) Once a ~~The insurer may limit its payment to the actual~~
34 ~~cash value of the sinkhole loss, not including underpinning or~~
35 ~~grouting or any other repair technique performed below the~~
36 ~~existing foundation of the building, until the policyholder~~
37 enters into a contract for the performance of building
38 stabilization or foundation repairs, the claim shall be paid up
39 to the full cost of the stabilization or foundation repairs and
40 up to full replacement cost for structural repairs as set forth
41 in this paragraph, less the insured's deductible. Once the



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

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

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

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



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71 policyholder's control.

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

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

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



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100 the policyholder the opportunity to withdraw the claim.

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

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

111 627.7073 Sinkhole reports.—

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

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

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

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

127 3. A description of the tests performed.

128 4. A recommendation by the professional engineer of methods



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129 for stabilizing the land and building and for making repairs to
130 the foundation.

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

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

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

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

142 4. A description of the tests performed.

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

244 (b) The proposed neutral evaluator has, in a professional



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245 capacity, previously represented either party or their
246 representatives in the same or a substantially related matter;

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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



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361 applicable insurance policy.

362 Section 16. Section 627.7065, Florida Statutes, is
363 repealed.

364

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

366 And the title is amended as follows:

367 Delete line 128

368 and insert:

369 proceeding has exclusive jurisdiction; amending s.
370 627.707, F.S.; revising the standards that an insurer
371 must meet when investigating a sinkhole claim;
372 amending s. 627.7073, F.S.; requiring that an
373 additional copy of an engineer's or geologist's report
374 and certification be provided to an insurer for
375 forwarding to the policyholder; providing a statement
376 of public policy; requiring that an insurer file a
377 copy of certain reports on behalf of an insured or the
378 insured's representative; requiring that the seller of
379 real property upon which a sinkhole claim has been
380 made disclose certain information; amending s.
381 627.7074, F.S.; providing that neutral evaluation of a
382 disputed sinkhole claim is available to either party
383 under certain circumstances; providing that neutral
384 evaluation does not supersede an appraisal clause;
385 authorizing parties to submit requests to disqualify
386 neutral evaluators for cause under certain
387 circumstances; specifying grounds for disqualification
388 of a neutral evaluator; requiring that the Department
389 of Financial Services appoint a neutral evaluator



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390 under certain circumstances; defining the term
391 "substantially related matter" for specified purposes;
392 requiring that a court proceeding be stayed for a
393 specified period after the filing of a neutral
394 evaluator's report; specifying circumstances under
395 which a neutral evaluator may enlist the assistance of
396 another professional from the department's list of
397 qualified neutral evaluators; clarifying requirements
398 for a neutral evaluator's report; providing for the
399 payment of certain costs when an insurer agrees to
400 comply with a neutral evaluator's report; repealing s.
401 627.7065, F.S., relating to a database of information
402 regarding sinkholes; deleting provisions relating to
403 certain duties of the Department of Financial Services
404 and the Department of Environmental Protection
405 regarding sinkholes; providing an