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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2011	.	
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The Committee on Banking and Insurance (Fasano) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 2790 - 2929  
and insert:

627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~  
~~insurers; insurer payment; nonrenewals.~~—Upon receipt of a claim  
for a sinkhole loss to a covered building or other structure, an  
insurer must meet the following standards in investigating a  
claim:

(1) The insurer must inspect ~~make an inspection of~~ the  
policyholder's insured's premises to determine if there is  
structural ~~has been physical~~ damage that ~~to the structure which~~



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13 may be the result of sinkhole activity.

14       (2) If the insurer confirms that structural damage exists  
15 but is unable to exclude sinkhole activity as a contributing  
16 cause of the structural damage ~~Following the insurer's initial~~  
17 ~~inspection,~~ the insurer shall engage a professional engineer or  
18 a professional geologist to conduct testing as provided in s.  
19 627.7072 to determine the cause of the loss within a reasonable  
20 professional probability and issue a report as provided in s.  
21 627.7073, only if sinkhole loss is covered under the policy.  
22 Except as provided in subsection (6), the fees and costs of the  
23 professional engineer or professional geologist shall be paid by  
24 the insurer.÷

25       ~~(a) The insurer is unable to identify a valid cause of the~~  
26 ~~damage or discovers damage to the structure which is consistent~~  
27 ~~with sinkhole loss; or~~

28       ~~(b) The policyholder demands testing in accordance with~~  
29 ~~this section or s. 627.7072.~~

30       (3) Following the initial inspection of the policyholder's  
31 ~~insured~~ premises, the insurer shall provide two copies of the  
32 signed and sealed engineer's or geologist's report, if any, and  
33 written notice to the policyholder disclosing the following  
34 information:

35       (a) What the insurer has determined to be the cause of  
36 damage, if the insurer has made such a determination.

37       (b) A statement of the circumstances under which the  
38 insurer is required to engage a professional engineer or a  
39 professional geologist to verify or eliminate sinkhole loss and  
40 to engage a professional engineer to make recommendations  
41 regarding land and building stabilization and foundation repair.



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42 (c) A statement regarding the right of the policyholder to  
43 request testing by a professional engineer or a professional  
44 geologist and the circumstances under which the policyholder may  
45 demand ~~certain~~ testing.

46 (4) If the insurer determines that there is no sinkhole  
47 loss, the insurer may deny the claim. If coverage for sinkhole  
48 loss is available and ~~If the insurer denies the claim,~~ without  
49 performing testing under s. 627.7072, the policyholder may  
50 demand testing by the insurer ~~under s. 627.7072~~. The  
51 policyholder's demand for testing must be communicated to the  
52 insurer in writing within 90 days after the policyholder's  
53 receipt of the insurer's denial of the claim. The policyholder  
54 may, at the policyholder's expense, retain a qualified  
55 professional engineer or professional geologist to conduct such  
56 testing in order to dispute the findings of the professional  
57 engineer or professional geologist retained by the insurer as to  
58 the presence or absence of a sinkhole loss, or to render such  
59 findings if the insurer denied the claim without performing  
60 testing.

61 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is  
62 verified, the insurer shall pay to stabilize the land and  
63 building and repair the foundation in accordance with the  
64 recommendations of the professional engineer retained pursuant  
65 to subsection (2), as provided under s. 627.7073, and in  
66 ~~consultation~~ with notice to the policyholder, subject to the  
67 coverage and terms of the policy. The insurer shall pay for  
68 other repairs to the structure and contents in accordance with  
69 the terms of the policy. The policyholder may, at the  
70 policyholder's expense, retain a qualified professional engineer



71 to dispute the findings of the professional engineer retained by  
72 the insurer as to the appropriate and structurally necessary  
73 method of land and building stabilization and foundation repair.

74 (a) ~~(b)~~ The insurer may limit its total claims payment to  
75 the actual cash value of the sinkhole loss, which does not  
76 include including underpinning or grouting or any other repair  
77 technique performed below the existing foundation of the  
78 building, until the policyholder enters into a contract for the  
79 performance of building stabilization or foundation repairs in  
80 accordance with the recommendations set forth in s. 627.7073.

81 (b) In order to prevent additional damage to the building  
82 or structure, the policyholder shall enter into a contract for  
83 the performance of building stabilization or foundation repairs  
84 within 90 days after the insurance company confirms coverage for  
85 sinkhole loss and notifies the policyholder of such confirmation  
86 and the time limitations of this paragraph. The time period is  
87 tolled if either party invokes the neutral evaluation process or  
88 if the policyholder takes reasonable steps toward retaining a  
89 qualified professional engineer to dispute the findings of the  
90 professional engineer retained by the insurer. Under such  
91 circumstances, the policyholder has 90 days to enter into the  
92 contract for repairs after the date the insurer agrees in  
93 writing to authorize the repairs recommended by the professional  
94 engineer retained by the policyholder or after the date any  
95 resulting dispute is resolved by litigation or appraisal.

96 (c) After the policyholder enters into the contract for the  
97 performance of building stabilization or foundation repairs, the  
98 insurer shall pay the amounts necessary to begin and perform  
99 such repairs as the work is performed and the expenses are



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100 incurred. The insurer may not require the policyholder to  
101 advance payment for such repairs. If repair covered by a  
102 personal lines residential property insurance policy has begun  
103 and the professional engineer selected or approved by the  
104 insurer determines that the repair cannot be completed within  
105 the policy limits, the insurer must ~~either~~ complete the  
106 professional engineer's recommended repair or tender the policy  
107 limits to the policyholder without a reduction for the repair  
108 expenses incurred.

109 (d) The stabilization and all other repairs to the  
110 structure and contents must be completed within 12 months after  
111 entering into the contract for repairs described in paragraph  
112 (b) unless:

113 1. There is a mutual agreement between the insurer and the  
114 policyholder;

115 2. The claim is involved with the neutral evaluation  
116 process;

117 3. The claim is in litigation; or

118 4. The claim is under appraisal.

119 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of  
120 all named policyholders and ~~the policyholder~~ and any other  
121 lienholder, the insurer may make payment directly to the persons  
122 selected by the policyholder to perform the land and building  
123 stabilization and foundation repairs. The decision by the  
124 insurer to make payment to such persons does not hold the  
125 insurer liable for the work performed. The policyholder may not  
126 accept a rebate from any person performing the repairs specified  
127 in this section. If a policyholder does receive a rebate,  
128 coverage is void ab initio and the policyholder must refund any



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129 payments made under such coverage. Any person making the repairs  
130 specified in this section who offers a rebate, or any  
131 policyholder who accepts a rebate for such repairs, commits  
132 insurance fraud, punishable as a third-degree felony as provided  
133 in s. 775.082, s. 775.083, or s. 775.084.

134 ~~(6) Except as provided in subsection (7), the fees and~~  
135 ~~costs of the professional engineer or the professional geologist~~  
136 ~~shall be paid by the insurer.~~

137 ~~(6)~~(7) If the insurer obtains, pursuant to s. 627.7073,  
138 written certification that there is no sinkhole loss and the  
139 policyholder does not subsequently obtain a contrary written  
140 certification from a neutral evaluator or other qualified  
141 professional engineer or professional geologist ~~or that the~~  
142 ~~cause of the damage was not sinkhole activity, and if the~~  
143 ~~policyholder has submitted the sinkhole claim without good faith~~  
144 ~~grounds for submitting such claim, the policyholder shall~~  
145 reimburse the insurer for 50 percent of the actual costs of the  
146 analyses and services provided under ss. 627.7072 and 627.7073;  
147 however, a policyholder is not required to reimburse an insurer  
148 more than the deductible or \$2,500, whichever is greater, with  
149 respect to any claim. A policyholder is required to pay  
150 reimbursement under this subsection only if the insurer, before  
151 ~~prior to~~ ordering the analysis under s. 627.7072, informs the  
152 policyholder in writing of the policyholder's potential  
153 liability for reimbursement and gives the policyholder the  
154 opportunity to withdraw the claim.

155 ~~(7)~~(8) An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of  
156 property insurance on the basis of filing of claims for partial  
157 loss caused by sinkhole damage or clay shrinkage if ~~as long as~~



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158 the total of such payments does not equal or exceed the ~~current~~  
159 policy limits of coverage for the policy in effect on the date  
160 of loss, for property damage to the covered building, as set  
161 forth on the declarations page, or if ~~and provided~~ the  
162 policyholder insured ~~has~~ repaired the structure in accordance  
163 with the engineering recommendations made pursuant to subsection  
164 (2) upon which any payment or policy proceeds were based. If the  
165 insurer pays such limits, it may nonrenew the policy.

166 (8) ~~(9)~~ The insurer and policyholder may engage a  
167 professional structural engineer to make recommendations as to  
168 the repair of the structure.

169  
170 Delete line 2967

171 and insert:

172 (c) If the policyholder disagrees with the findings,  
173 opinions, or recommendations of the professional engineer or  
174 professional geologist retained by the insurer, the policyholder  
175 may, at the policyholder's expense, retain a qualified  
176 professional engineer or professional geologist to conduct  
177 testing under s. 627.7072 and render independent findings,  
178 opinions, and recommendations as to the cause of the distress to  
179 the property and the appropriate method of land and building  
180 stabilization and foundation repair.

181 (d) Unless the policyholder engages another qualified  
182 professional engineer or professional geologist as described in  
183 paragraph (c), the respective findings, opinions, and  
184 recommendations

185  
186 ===== T I T L E A M E N D M E N T =====



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187 And the title is amended as follows:  
188       Delete lines 166 - 176  
189 and insert:  
190       investigation of sinkholes by insurers; providing a  
191       time limitation for demanding sinkhole testing by a  
192       policyholder and entering into a contract for repairs;  
193       authorizing a policyholder to retain a professional  
194       engineer or geologist at the policyholder's expense to  
195       conduct testing or dispute findings; requiring all  
196       repairs to be completed within a certain time;  
197       providing exceptions; providing a criminal penalty for  
198       offering a rebate or for accepting a rebate from  
199       persons performing repairs; amending s. 627.7073,  
200       F.S.; revising provisions relating to inspection  
201       reports; authorizing a policyholder to retain a  
202       professional engineer or geologist at the  
203       policyholder's expense to render independent findings;  
204       providing that the