

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.)

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

BILL: SB 1498

INTRODUCER: Senator Brandes

SUBJECT: Sinkhole Insurance

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Pre-meeting
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1498 changes the insurer’s payment responsibility when a sinkhole loss is verified. The bill requires the insurer to “pay to stabilize the structure.” Current law requires the insurer to pay, “to stabilize the land and building and repair the foundation.” A policyholder who is paid by the insurer to stabilize the structure must also repair the sinkhole. The method used to stabilize the structure must be warranted for the lifetime of the structure. The bill amends the definition of structural damage by requiring use of the 2007 edition of the Florida Building Code to define when the interior building structure or members are unfit for service or represent a safety hazard as a result of interior floor displacement.

The bill specifies that the insured and insurer jointly own a sinkhole testing report and requires two original reports to be sent to the insured and a copy to the insurer. The bill imposes a \$25 per day penalty for each day that an insurer fails to file a copy of the sinkhole report and certification with the clerk of court within 30 days after paying a sinkhole claim.

The effective date is July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 627.706, 627.707, and 627.7073.

II. Present Situation:

Sinkhole Insurance

Under current law, 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.¹ Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs. Insurance companies must also provide coverage for catastrophic ground cover collapse.² Insurers may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. An insurer may require a property inspection prior to issuing sinkhole loss coverage.

Sinkhole coverage is payable when a “sinkhole loss” occurs.³ A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity.⁴ The bill creates a detailed definition of “structural damage” for purposes of determining whether a sinkhole loss has occurred.⁵ The definition specifies five distinct types of damage that constitute structural damage. Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. “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.⁶ 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.

Sinkhole insurance claims increased substantially both in number and cost over the past two decades and most dramatically over the last several years.⁷ The drastic increase in sinkhole claims is harming the financial stability of Citizens Property Insurance Corporation (Citizens) and private market insurers and making residential property insurance increasingly unaffordable or unavailable for consumers. 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.⁸ Total sinkhole claim costs for these insurers amounted to approximately \$1.4 billion for the same period.⁹ These losses resulted in large premium increases for sinkhole coverage, particularly in Hillsborough, Pasco, and Hernando counties. The 2011 Legislature enacted legislation in (CS/CS/CS/SB 408) to address the large increases in sinkhole policyholder premiums and losses.

¹ S. 627.706, F.S.

² Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable.

³ See s. 627.706(1)(b), F.S., and s. 627.707(5), F.S.

⁴ S. 627.706(2)(j), F.S.

⁵ S. 627.706(2)(k), F.S.

⁶ S. 627.706(2)(i), F.S.

⁷ The increase in claims frequency and severity is based on data collected from 211 insurers by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report)),

⁸ The sources for the report included sinkhole policy and claims information collected from 211 insurers for the period 2006 to 2010, pursuant to a data call by the Office of Insurance Regulation. The report also utilized policy and claims data submitted by Citizens Property Insurance Corporation, individual insurers as well as background and research information collected by committee staff.

⁹ See *id.*

Investigation of Sinkhole Claims

Upon receiving a sinkhole claim, the insurer must investigate the claim to determine whether the building has incurred structural damage that has been caused by sinkhole activity. The insurer is not required to pay benefits for sinkhole loss if structural damage is not present or sinkhole activity is not the cause of the structural damage. The claim investigation process is as follows:

- *Initial Inspection and 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. 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 Initiated by the Insurer:* 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. Upon the completion of sinkhole testing, the professional engineer must issue a report and certification that details whether the testing verified a sinkhole loss.
- *Authorization to Deny Sinkhole Claim:* Insurers may deny the claim upon a determination that there is no sinkhole loss.
- *Policyholder Demand for Sinkhole Testing:* The policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed (i.e. the claim denial was not issued due to policy conditions or exclusions of coverage and instead was based on the failure of the loss to meet the definition of sinkhole loss). However, if the policyholder requests such testing, it must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500. If the requested testing confirms a sinkhole loss, the insurer must reimburse the testing costs to the policyholder.

Neutral Evaluation of Sinkhole Claims

In 2006, the Legislature established an alternative process for resolving sinkhole disputes called "neutral evaluation." The Department of Financial Services (DFS) certifies engineers and geologists to serve as "neutral evaluators" of sinkhole claims disputes. If the parties do not reach a settlement, the neutral evaluator renders an opinion whether a sinkhole loss has been verified. Neutral evaluation must determine causation (whether a sinkhole loss has occurred and, if so, whether the observed damage was caused by sinkhole activity); all methods of stabilization and repair both above and below ground; the costs for stabilization and all repairs; and all information needed to determine whether a sinkhole loss has been verified and render an opinion on all matters at dispute in the neutral evaluation. Neutral evaluation is mandatory if requested by either party, but nonbinding, and the costs are paid by the insurer. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim.

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. 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. Payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. 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.

The two most commonly recommended stabilization techniques are grouting and underpinning. Under the grouting procedure, a grout mixture (composed of cement, sand, fly ash, and water) 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. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation.

The contract for below-ground repairs to be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. 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.

Once building stabilization or foundation repairs of a sinkhole loss are completed, the professional engineer responsible for monitoring the repairs must issue a report to the property owner detailing the repairs performed and certifying that the repairs were performed properly. The professional engineer must file with the Clerk of Court a copy of the report and certification, the legal description of the real property, and the name of the county clerk of court.

Insurers who have paid a claim for sinkhole loss must file a copy of the engineer/geologist report, the neutral evaluator's report (if any), a copy of the certification indicating that stabilization has been completed (if applicable), the amount of the claim payment, and the legal description of the property with the county clerk, who must record the report and certification. The policyholder must file a copy of any sinkhole report prepared on behalf of the policyholder as a precondition to accepting a sinkhole loss payment. The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer that a claim has been paid and whether or not the full amount of proceeds were used to repair the sinkhole damage.

Limitation on Nonrenewal of Policy Due to Sinkhole Claims

An insurer may not nonrenew a policy due to the policyholder filing a sinkhole loss claim if the claim payments are less than policy limit for the covered building or if the policyholder repairs

the structure in accordance with the engineering recommendations that accompany sinkhole testing may only be nonrenewed if the insurer makes payments for sinkhole loss that equal or exceed policy limits for damage to the covered building or the policyholder does not repair the structure in accordance with the engineering recommendations.

III. **Effect of Proposed Changes:**

Section 1 amends s. 627.706(2)(k), F.S., to revise the definition of “structural damage” for purposes of determining if a sinkhole loss has occurred. The bill requires using the 2007 edition of the Florida Building Code to define when the interior building structure or members are unfit for service or represent a safety hazard as a result of interior floor displacement, thus constituting structural damage.

Section 2 amends s. 627.707, F.S., to change the insurer’s payment responsibility when a sinkhole loss is verified. The bill requires the insurer to “pay to stabilize the structure.” Current law requires the insurer to pay, “to stabilize the land and building and repair the foundation.” A policyholder who is paid by the insurer to stabilize the structure must also repair the sinkhole. The method used to stabilize the structure must be warranted for the lifetime of the structure.

The bill also requires an insurer to renew a property insurance policy if a claim for sinkhole loss is made and payments on the claim are less than the limits of coverage for property damage on the date of loss or if the policyholder repairs the structure in accordance with the engineering recommendations upon which any payment or policy proceeds were based.

Section 3 amends s. 627.7073, F.S., to specify that the sinkhole report and certification issued after testing by a professional engineer or professional geologist is the jointly owned property of the insurer and policyholder. The professional engineer or professional geologist who issued the report is required to send by certified mail, return receipt requested, two original signed and sealed reports to the policyholder and copy of the report to the insurer. The bill imposes a \$25 per day penalty for each day that an insurer fails to file a copy of the sinkhole report and certification with the clerk of court within 30 days after paying a sinkhole claim. The penalty is payable to the clerk of court.

Section 4 provides an effective date of July 1, 2013.

Other Potential Implications:

The change in the insurer’s payment responsibility may create ambiguities regarding the insurer’s responsibilities for paying a sinkhole claim. Bill language requiring the insurer to pay to stabilize the structure, paired with the statement that “[a] policyholder who is paid by the insurer to stabilize the structure must also repair the sinkhole” may be interpreted to indicate that the insurer’s duties are only to pay to stabilize the structure, and that the policyholder must pay out-of-pocket to repair the sinkhole (usually by injecting grout below ground). This ambiguity would occur when a sinkhole claims payment is made on the basis of a professional engineer’s recommendation of grouting and underpinning after conducting sinkhole testing. The underpinning alone may serve to stabilize the structure; however, grouting would be required to repair the sinkhole activity.

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:

The bill requires that the method used to stabilize the structure in a sinkhole repair must be warranted for the lifetime of the structure. It is uncertain whether vendors that perform such repairs currently provide such warranties.

The bill requires an insurer to renew a property insurance policy if a claim for sinkhole loss is made and claim payments are not greater than policy limits, or if the policyholder performs repairs in accordance with the engineering recommendations upon which any payment or policy proceeds were based. This may prevent an insurer from nonrenewing or cancelling an insurance policy for any reason other than nonpayment of premium.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
