

By the Committee on Banking and Insurance; and Senator Simpson

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1                   A bill to be entitled  
2       An act relating to sinkhole coverage; amending s.  
3       627.351, F.S.; requiring Citizens Property Insurance  
4       Corporation to submit a biannual report on the number  
5       of residential sinkhole policies requested, issued,  
6       and declined; providing legislative intent and  
7       establishing a Citizens Sinkhole Stabilization Repair  
8       Program for sinkhole claims; defining terms;  
9       prohibiting the corporation from requiring a  
10      policyholder to advance payment for stabilization  
11      repairs provided under the program; providing  
12      requirements and procedures for selecting  
13      stabilization repair contractors to conduct  
14      stabilization repairs; providing requirements and  
15      terms for contracts between the corporation and such  
16      contractors; specifying additional parameters with  
17      respect to the program, including provision for  
18      resolving disputes between the corporation and a  
19      policyholder; providing applicability; requiring the  
20      Office of Program Policy Analysis and Government  
21      Accountability to conduct a study of the program and  
22      submit a report to the Governor, the Chief Financial  
23      Officer, and the Legislature; providing an effective  
24      date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
27

28       Section 1. Paragraph (ee) of subsection (6) of section  
29       627.351, Florida Statutes, is amended, present paragraphs (ff)

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30 through (hh) of that subsection are redesignated as paragraphs  
31 (gg) through (ii), respectively, and new paragraphs (ff) is  
32 added to that subsection, to read:

33 627.351 Insurance risk apportionment plans.—

34 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

35 (ee) At least once every 6 months, the corporation shall  
36 submit a report to the office disclosing:

37 1. The total number of requests received for residential  
38 sinkhole loss coverage;

39 2. The total number of policies issued for residential  
40 sinkhole loss coverage;

41 3. The total number of requests declined for residential  
42 sinkhole loss coverage; and

43 4. The reasons for declining requests for residential  
44 sinkhole loss coverage ~~The office may establish a pilot program~~  
45 ~~to offer optional sinkhole coverage in one or more counties or~~  
46 ~~other territories of the corporation for the purpose of~~  
47 ~~implementing s. 627.706, as amended by s. 30, chapter 2007-1,~~  
48 ~~Laws of Florida. Under the pilot program, the corporation is not~~  
49 ~~required to issue a notice of nonrenewal to exclude sinkhole~~  
50 ~~coverage upon the renewal of existing policies, but may exclude~~  
51 ~~such coverage using a notice of coverage change.~~

52 (ff) The Legislature finds that providing a program to  
53 repair property damaged by sinkholes safeguards the public's  
54 health, safety, and welfare and that it is in the public's  
55 interest for sinkhole loss claims to be resolved by stabilizing  
56 the land and structure and repairing the foundation of the  
57 damaged structure. The Legislature further finds that, in the  
58 past, many homeowners who obtained payouts from the corporation

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59 for a sinkhole claim did not use the funds to repair or  
60 remediate the claimed damage, thereby harming the real estate  
61 marketability of their homes and the valuation of other homes in  
62 the area. Therefore, the corporation shall establish a Citizens  
63 Sinkhole Stabilization Repair Program to promote the repair and  
64 remediation of sinkhole damage to homes. By March 31, 2015, any  
65 claim against a corporation policy that covers residential  
66 sinkhole loss for which it is determined that a covered sinkhole  
67 loss has occurred must be included in and governed by the repair  
68 program for the purpose of making stabilization repairs. The  
69 determination of whether a policyholder has a covered sinkhole  
70 loss will be made by the corporation or through neutral  
71 evaluation, judicial decree, or final judgment.

72 1. As used in this paragraph, the term:

73 a. "Engineering report" means the report issued pursuant to  
74 s. 627.7073(1).

75 b. "Neutral evaluation" and "neutral evaluator" have the  
76 same meanings as provided in s. 627.706(2).

77 c. "Recommendation of the engineer" means the  
78 recommendation of the professional engineer engaged by the  
79 corporation and included in the report pursuant to s.  
80 627.7073(1)(a)5.

81 d. "Sinkhole loss" has the same meaning as provided in s.  
82 627.706(2).

83 e. "Stabilization repair" means stabilizing the land and  
84 structure caused by sinkhole activity and repairing the damaged  
85 structure.

86 f. "Stabilization repair contractor" means a contractor who  
87 makes stabilization repairs.

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88       2. The repair program shall be managed by the corporation  
89 and must include the following components:

90       a. The policyholder may not be required to advance payment  
91 for stabilization repairs.

92       b. Stabilization repairs must be conducted by a  
93 stabilization repair contractor selected from an approved  
94 stabilization repair contractor pool procured by the corporation  
95 pursuant to an open and transparent process. Each contractor  
96 within the pool must be qualified and approved by the  
97 corporation based on criteria that include the following  
98 requirements:

99       (I) The stabilization repair contractor corporate entity  
100 must demonstrate experience in the stabilization of sinkhole  
101 activity pursuant to requirements established by the  
102 corporation.

103       (II) The stabilization repair contractor must be certified  
104 as a contractor pursuant to s. 489.113(1).

105       (III) The stabilization repair contractor must demonstrate  
106 capacity to be bonded and provide performance, surety, or other  
107 bonds as described in this section, which may be supplemented by  
108 additional requirements as determined by the corporation.

109       (IV) The stabilization repair contractor must demonstrate  
110 that it meets insurance coverage requirements, including, but  
111 not limited to, commercial general liability and workers'  
112 compensation, established by the corporation.

113       (V) The stabilization repair contractor must maintain a  
114 valid drug-free workplace program.

115       (VI) Such other requirements as may be established by the  
116 corporation.

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117 c. Stabilization repair contractors selected from the  
118 approved stabilization repair contractor pool shall conduct  
119 stabilization repairs pursuant to a contract between the  
120 contractor and the corporation. Such contract is not subject to  
121 paragraph (e) or s. 287.057. Pursuant to the terms of the  
122 contract, the selected contractor is solely responsible for the  
123 performance of all necessary stabilization repairs specified in  
124 the engineering report and the recommendations of the engineer.

125 d. The corporation shall develop a standard stabilization  
126 repair contract for the purpose of conducting stabilization  
127 repairs on all properties within the repair program. At a  
128 minimum, the contract must require:

129 (I) The assigned stabilization repair contractor to  
130 complete all stabilization repairs identified in the engineering  
131 report based on line-item prices developed by the corporation  
132 which reasonably reflect actual market prices for sinkhole  
133 stabilization activities.

134 (II) Each stabilization repair contractor to post a payment  
135 bond in favor of the corporation as obligee for each project  
136 assigned and to post a performance bond, secured by a third-  
137 party surety, in favor of the corporation as obligee, in a  
138 principal amount equal to the total cost of all contracts  
139 annually awarded to that contractor.

140 (III) The stabilization repair contractor to provide a  
141 warranty to the policyholder which covers all repairs provided  
142 by the stabilization repair contractor for at least 5 years  
143 after completion of the stabilization repairs. The corporation  
144 shall also provide a warranty to the policyholder which covers  
145 all repairs provided by the stabilization repair contractor for

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146 at least 5 years if the stabilization repair contractor is  
147 unable to provide a remedy required under the warranty it  
148 provided to the policyholder.

149 (IV) That, throughout the course of the stabilization  
150 repairs performed by the contractor, the engineer monitor the  
151 property and confirm that stabilization has been satisfactorily  
152 completed and that no further stabilization is necessary to  
153 remedy the damage identified in the engineering report and the  
154 recommendations of the engineer.

155 (V) That the stabilization repair contractor notify the  
156 corporation if the engineer concludes that additional  
157 stabilization repairs are necessary to complete the repairs  
158 specified in the engineering report and the recommendations of  
159 the engineer. If repairs can be completed within policy limits,  
160 the stabilization repair contractor shall complete the  
161 additional repairs based on the line-item prices developed by  
162 the corporation. The contract must also contain provisions  
163 specifying the remedy and sanctions for failing to perform the  
164 additional repairs.

165 e. The corporation shall enter into contracts with  
166 qualified stabilization repair contractors to perform repairs  
167 pursuant to a process that requires all of the following  
168 components:

169 (I) Within 30 days after the completion of the engineering  
170 report, the report must be posted on a list that is made  
171 available to all stabilization repair contractors within the  
172 pool.

173 (II) The corporation shall select a stabilization repair  
174 contractor from the pool pursuant to a selection process

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175 established by the corporation for assigning a stabilization  
176 repair contractor to perform stabilization repairs for each  
177 property within the program. The selection process must include  
178 all of the following:

179 (A) All stabilization repair contractors within the pool  
180 are provided an opportunity to submit an offer to perform the  
181 stabilization repairs recommended in the engineering report.  
182 Such offer must include an itemized statement of work based on  
183 line-item prices developed by the corporation.

184 (B) The corporation shall review the offers and provide the  
185 policyholder with a list of all stabilization repair contractors  
186 that submit an offer under sub-sub-sub-subparagraph (A).

187 (C) The policyholder has up to 30 days to select a  
188 stabilization repair contractor from the list. If the  
189 policyholder fails to make a selection within 30 days, the  
190 corporation shall make the selection. The corporation may  
191 reserve the right to select a stabilization repair contractor on  
192 the list based upon quality, cost-effectiveness, and such other  
193 criteria as the corporation determines appropriate.

194 (D) If no stabilization repair contractor submits an offer  
195 to perform the stabilization repairs for a property within the  
196 program or if all offers are above the policyholder's policy  
197 limit, the corporation may enter the property into the selection  
198 process again or may pay the policyholder an amount up to the  
199 policy limits on the structure. If the property is entered into  
200 the selection process three times and no stabilization repair  
201 contractor submits an offer to repair the property or all offers  
202 are above the policyholder's policy limit, the corporation shall  
203 elect to pay for stabilization repairs above the policyholder's

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204 policy limit or pay the policyholder an amount up to the policy  
205 limits on the structure.

206 3. The corporation is not responsible for serving as a  
207 stabilization repair contractor. The corporation's obligations  
208 under the repair program are not an election to repair by the  
209 corporation and therefore do not imply or create a new  
210 contractual relationship with the policyholder.

211 4. The corporation's liability related to stabilization  
212 repair activity pursuant to the repair program and all other  
213 repairs to the structure conducted in accordance with the terms  
214 of the policy may not be greater than the policy limits on the  
215 structure.

216 5. The corporation shall pay for other repairs to the  
217 structure and contents in accordance with the terms of the  
218 policy.

219 6. If the professional engineer engaged by the corporation  
220 determines that the stabilization repair cannot be completed  
221 within policy limits, the corporation must pay to complete the  
222 stabilization repair recommended by the corporation's  
223 professional engineer or tender the policy limits to the  
224 policyholder.

225 7. If a dispute arises between the corporation and the  
226 policyholder under this paragraph, under the policy, or under s.  
227 627.707 relating to the nature or extent of stabilization  
228 repairs to be conducted under the repair program, the sole  
229 remedy for resolving such dispute shall be to proceed with the  
230 necessary stabilization repairs through the repair program  
231 established under this paragraph, regardless of whether the  
232 claim, judgment, or decree is for breach of contract,



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233 declaratory relief, or specific performance.

234 8. If the corporation denies a policyholder's claim for  
235 sinkhole loss, the corporation or the policyholder may invoke  
236 neutral evaluation by filing a request with the department  
237 pursuant to s. 627.7074(7). Neutral evaluation is mandatory if  
238 requested by the corporation or the policyholder.

239 a. The neutral evaluator may not directly or indirectly  
240 participate in the remediation, repair, or restoration of the  
241 damaged property that is the subject of the claim, have a  
242 financial interest in the remediation, repair, or restoration of  
243 the damaged property that is the subject of the claim, or have a  
244 financial interest in any business entity that is involved in  
245 the remediation, repair, or restoration of the damaged property  
246 that is the subject of the claim.

247 b. The only issues to be determined by the neutral  
248 evaluator, pursuant to state law and the applicable policy, are  
249 whether there is sinkhole activity present as determined by a  
250 qualified professional geologist and, if so, whether there is  
251 sinkhole loss as determined by a qualified professional  
252 engineer. If the neutral evaluator determines that sinkhole loss  
253 exists, the sinkhole damage shall be included in and governed by  
254 the repair program.

255 c. Filing a request for neutral evaluation tolls the  
256 applicable time requirements for filing suit for 60 days  
257 following the conclusion of the neutral evaluation process or  
258 the time prescribed in s. 95.11, whichever is later.

259 9. This paragraph does not prohibit the corporation from  
260 establishing a managed repair program for other repairs to the  
261 structure in accordance with the terms of the policy.

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262       10. This paragraph supersedes s. 627.7074(4) and applies  
263 only to the corporation and its policyholders and does not apply  
264 to any other insurer.

265       11. This paragraph supersedes s. 627.707(5)(a)-(d).

266       Section 2. By January 1, 2017, the Office of Program Policy  
267 Analysis and Government Accountability shall review the Citizens  
268 Sinkhole Stabilization Repair Program and submit a report to the  
269 Governor, the Chief Financial Officer, the President of the  
270 Senate, and the Speaker of the House of Representatives. The  
271 report must:

272       (1) Analyze policyholder satisfaction with stabilization  
273 repairs received through the program and the sufficiency of  
274 consumer protections provided by the program.

275       (2) Analyze the timeliness of stabilization repairs, in  
276 comparison with industry averages and practices. The report  
277 shall evaluate the loss costs associated with sinkhole claims  
278 under the program, comparing them with corporation's loss costs  
279 before the program's creation.

280       (3) Evaluate whether disputes between stabilization repair  
281 contractors and policyholders are resolved in an effective and  
282 timely manner.

283       (4) Evaluate whether litigation of sinkhole claims and  
284 associated costs are increasing or decreasing under the program,  
285 and the causes of such litigation.

286       (5) Evaluate the cost-effectiveness of allowing the program  
287 to be managed by a third-party administrator.

288       Section 3. This act shall take effect July 1, 2014.