

**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 Appropriations Subcommittee on General Government

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BILL: CS/SB 1274

INTRODUCER: Banking and Insurance Committee and Senator Latvala

SUBJECT: Limited Sinkhole Coverage Insurance

DATE: February 23, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1274 creates s. 627.7151, F.S., which allows insurers to offer a new type of sinkhole insurance coverage. Limited sinkhole coverage would, as under current law, only provide coverage for “sinkhole loss” which current law defines as structural damage to the covered building, including the foundation, caused by sinkhole activity. Limited sinkhole coverage would also be subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., with the following exceptions:

- Available only for personal lines residential insurance;
- Coverage may be limited to repairs to stabilize the building and repair the foundation;
- Deductibles may be in an amount agreed to by the insured and insurer;
- Policy limits may be in an amount agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property;
- Requires a signed notice by an applicant that the applicant has read and understands the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.;
- Allows insurers to establish limited sinkhole policy forms not subject to filing with and approval by the Office of Insurance Regulation (OIR);
- Until October 1, 2019, insurers may file rates for limited sinkhole coverage that are not subject to the filing and review requirements of s. 627.062(2)(a) and (f), F.S.;
- Until July 1, 2020, surplus lines agents may export coverage to eligible surplus lines insurers without obtaining three declinations from admitted insurers;

- Prohibits a limited sinkhole coverage post loss assignment of benefit except to a subsequent purchaser of the property who acquires insurable interest following a loss.

The bill establishes surplus requirements of \$7.5 million for new and existing insurers that solely transact limited sinkhole coverage insurance. Insurers providing limited sinkhole coverage must notify the OIR at least 30 days prior to offering the coverage in the state. Such insurers must file a plan of operation and financial projections or revisions to such plan, as applicable, with the office.

The bill has no fiscal impact on state funds.

The bill is effective July 1, 2016.

## II. Present Situation:

### Insurance for Sinkholes and Catastrophic Ground Cover Collapse

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.<sup>1</sup> Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.<sup>2</sup> In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.<sup>3</sup> Catastrophic ground cover collapse is more severe than sinkhole loss. Catastrophic ground cover collapse means geological activity that results in all the following:

1. The abrupt collapse of the ground cover;
2. A depression in the ground cover clearly visible to the naked eye;
3. Structural damage to the covered building, including the foundation; and
4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.<sup>4</sup>

Insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.<sup>5</sup> Such coverage is subject to the insurer's approved underwriting and insurability guidelines. At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. However, by law, Citizens Property

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<sup>1</sup> Section 627.706(2)(b), F.S.

<sup>2</sup> Ch. 1981-280, Laws of Fla.

<sup>3</sup> Section 30, Ch. 2007-1, Laws of Fla.

<sup>4</sup> Section 627.706(2)(a), F.S.

<sup>5</sup> Section 627.706, F.S.

Insurance Corporation (Citizens)<sup>6</sup> sinkhole loss coverage does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: one percent, two percent, five percent, or ten percent of policy dwelling limits. The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders only a ten percent sinkhole loss deductible.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.<sup>7</sup> In 2011, the Legislature reviewed the sinkhole law and enacted comprehensive reforms addressing all areas of the law. Data collected by the Office of Insurance Regulation (OIR) in 2010, before the reforms were enacted, showed a significant increase in the number and cost of sinkhole claims from 2006 to 2010.<sup>8</sup> These increases impacted the financial stability of property insurers in Florida, including Citizens, and were used by insurers to justify property insurance rate increases.

### **2011 Sinkhole Insurance Reforms**

The sinkhole reforms enacted in 2011 were in response to the increasing number and cost of sinkhole claims. The goal of the reforms was to keep sinkhole loss insurance available to homeowners while providing more certainty in sinkhole claims for homeowners and insurers in terms of coverage, costs, repairs, and exposure. The bill enacted numerous revisions and clarifications to ss. 627.706-627.7074, F.S., governing sinkhole and catastrophic ground cover collapse insurance.

#### ***Definition of Sinkhole Loss***

The legislative reforms revised the definition of "sinkhole loss," primarily by creating a statutory definition of "structural damage." A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. The 2011 legislative reforms created a detailed definition of "structural damage" for purposes of determining whether a sinkhole loss has occurred. 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. Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity.

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<sup>6</sup> Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

<sup>7</sup> chs. 2005-111, 2006-12, and 2011-39, Laws of Fla.

<sup>8</sup> *Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation*, 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 visited Feb. 5, 2016).

### ***Investigation and Payment of Sinkhole Claims***

The 2011 legislative sinkhole reforms substantially revised the statutory process for investigating and paying sinkhole claims in s. 627.707, F.S. The process requires the insurer to determine whether the building has incurred structural damage that has been caused by sinkhole activity.<sup>9</sup> Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. This 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.<sup>10</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>11</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>12</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) and a statement of the circumstances under which the insurer must conduct sinkhole testing.<sup>13</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>14</sup>
- **Authorization to Deny Sinkhole Claim** – An insurer may deny a claim upon a determination that there is no sinkhole loss.<sup>15</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>16</sup> if a sinkhole loss is confirmed.<sup>17</sup> However, a policyholder requesting such testing must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500.<sup>18</sup> If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.<sup>19</sup>
- **Payment of Sinkhole Claims** – If a sinkhole loss is verified, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer retained by the insurer.<sup>20</sup> Payment for other repairs to the structure

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<sup>9</sup> Section 627.707(1), F.S.

<sup>10</sup> See *id.*

<sup>11</sup> Section 627.707(2), F.S.

<sup>12</sup> See *id.*

<sup>13</sup> Section 627.707(3), F.S.

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

<sup>15</sup> Section 627.707(4)(a), F.S.

<sup>16</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>17</sup> Section 627.707(4)(b), F.S.

<sup>18</sup> Section 627.707(4)(b)2., F.S.

<sup>19</sup> Section 627.707(4)(b)3., F.S.

<sup>20</sup> Section 627.707(5), F.S.

and contents are governed by the insurance policy. 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>21</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.,<sup>22</sup> and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss.<sup>23</sup> The time period is tolled if either party invokes neutral evaluation. If repairs cannot be completed within policy limits, the insurer may either pay to complete the recommended repairs or tender policy limits without a reduction for repair expenses already incurred.<sup>24</sup>

### ***Other Revisions***

The 2011 bill authorized insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. The bill also allows an insurer to require a property inspection prior to issuing sinkhole loss coverage. The bill clarified that additional living expense coverage is only available pursuant to a sinkhole loss if there is structural damage to the covered building.

### ***Results of 2011 Sinkhole Insurance Reforms***

The first complete year the reforms were in effect was 2012.<sup>25</sup> No data has been collected on an industry-wide basis on the number of claims, claim severity, or claim costs since the reforms were enacted, so the impact on sinkhole claims and costs on an industry-wide basis is unknown. However, Citizens performed a sinkhole study in 2012 to compute the impact of the 2011 reforms on their policies.<sup>26</sup> This study looked at actual sinkhole claim files from Citizens and readjusted the losses and expenses associated with the claims as if the 2011 reforms had been in effect. The actuarial analysis which accompanied the study projected the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent. In Citizens' rate filing for 2014,<sup>27</sup> their actuary projected Citizens' sinkhole losses would decrease by over 52 percent relative to what they would have been without the 2011 reforms. The actuary further noted, however, that even with the projected reduction in sinkhole losses, Citizens still has a significant rate deficiency in the sinkhole area. In fact, in 2012, Citizens earned almost \$57 million in sinkhole premium but paid almost \$227 million in sinkhole losses and expenses.

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<sup>21</sup> Section 627.707(5)(a), F.S.

<sup>22</sup> Section 627.707(5), F.S.

<sup>23</sup> Section 627.707(5)(b), F.S.

<sup>24</sup> Section 627.707(5), F.S.

<sup>25</sup> The reforms were effective on May 17, 2011, when the bill (CS/CS/CS/SB 408) was signed by the Governor.

<sup>26</sup> *Citizens Property Insurance Corporation Senate Bill 408 Sinkhole Analysis*, prepared by Insurance Services Office, dated Jul. 19, 2012, and presented at Citizens' Board of Governors Meeting on Jul. 27, 2012, [https://www.citizensfla.com/documents/20702/643634/07AH\\_Citizens\\_SB408\\_Sinkhole\\_Analysis.pdf/a26f62af-b142-4b5c-aed2-35821603c1a0](https://www.citizensfla.com/documents/20702/643634/07AH_Citizens_SB408_Sinkhole_Analysis.pdf/a26f62af-b142-4b5c-aed2-35821603c1a0) (last visited Feb. 9, 2016).

<sup>27</sup> Citizens Property Insurance Company, *2014 Rate Kit*, pg. 4, <https://www.citizensfla.com/documents/20702/124817/2014+Rate+Kit.pdf/7564c271-8e83-427d-8cb4-ca41b67a2e57> (last visited Feb. 9, 2016).

According to data accompanying Citizens 2016 rate filing,<sup>28</sup> in 2014, new sinkhole claim volume was down 68 percent from 2013. This continued a trend of annual reductions in the number of sinkhole claims filed with the corporation. In 2011, over 4,500 sinkhole claims were reported to Citizens. In 2012, that number decreased to approximately 3,100 claims and in 2013 the total claims received was approximately 1,200.<sup>29</sup> Total incurred losses and allocated loss adjustment expenses have dropped substantially from approximately \$537 million in 2011 to approximately \$83 million in 2014.<sup>30</sup>

### **Standards for Sinkhole Testing and Sinkhole Reports**

Section 627.7072, F.S., requires sinkhole testing to be performed by a professional engineer and a professional geologist. The tests performed must be sufficient for the professional geologist and professional engineer to determine the presence of a sinkhole loss or other cause of damage. The tests must also enable the professional engineer to make recommendations regarding necessary building stabilization and foundation repair.

Upon the completion of sinkhole testing, the professional engineer or professional geologist must issue a report and certification to the insurer and the policyholder pursuant to the requirements of s. 627.7073, F.S. The report must detail the testing performed, whether structural damage is present, whether sinkhole activity is the cause of the damage, and any recommendations for stabilizing the land and building and making foundation repairs. The findings and recommendations of the insurer's professional engineer are presumed to be correct. If an insurer pays a claim for sinkhole loss, the insurer must file a copy of the report and certification and other required documentation with the county clerk of court. Once building stabilization or foundation repairs are complete for a verified sinkhole loss, the engineer responsible for monitoring repairs must issue a report to the policyholder detailing the repairs performed and certify that the repairs were performed properly. The report must also be filed with the county clerk of court.

### **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>31</sup> has been issued. The neutral

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<sup>28</sup> Citizens Property Insurance Company, *2016 Rate Kit*, pg. 10, <https://www.citizensfla.com/documents/20702/30286/2016+Rate+Hearing+Kit/479c1ab7-f120-47ca-a158-6f908ff36d1a> (last visited Feb. 9, 2016).

<sup>29</sup> Citizens Property Insurance Company, *Citizens Property Insurance Corporation Actuarial & Underwriting Committee Recommended Rate Filing Executive Summary, Jun. 23, 2015*, at pg. 5, [https://www.citizensfla.com/documents/20702/27059/02\\_2016\\_Annual\\_Recommended\\_Rate\\_Filing\\_Exec\\_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0](https://www.citizensfla.com/documents/20702/27059/02_2016_Annual_Recommended_Rate_Filing_Exec_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0) (last visited Feb. 9, 2016).

<sup>30</sup> Citizens Property Insurance Corporation, *2016 Rate Hearing*, pg. 19, <https://www.citizensfla.com/documents/20702/30286/2016+Rate+Hearing+Kit/479c1ab7-f120-47ca-a158-6f908ff36d1a> (last visited Feb. 9, 2016).

<sup>31</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 geologist 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.

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>32</sup> Neutral evaluation is nonbinding, but the insurer and policyholder must participate if either party requests it.<sup>33</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 and all repairs, and the information necessary to issue a report of the neutral evaluator's findings and recommendations.<sup>34</sup>

Neutral evaluation is an informal process in which formal rules of evidence and procedure need not be observed.<sup>35</sup> The insurer or the policyholder request neutral evaluation by sending written notice to the Department of Financial Services (DFS).<sup>36</sup> The DFS then provides a list of certified neutral evaluators to the parties who have 14 days to select a neutral evaluator.<sup>37</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>38</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>39</sup> The neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated.<sup>40</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>41</sup> The recommendation of the neutral evaluator and his or her testimony must be admitted in any litigation relating to the insurance claim.<sup>42</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>43</sup>

### **Surplus Requirements**

To transact insurance in Florida, insurers must apply for a certificate of authority and meet certain surplus requirements. For a new domestic insurer that transacts residential property insurance and is:

- Not a wholly owned subsidiary of an insurer domiciled in any other state, the surplus requirement is at least \$15 million.

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<sup>32</sup> See s. 627.7074(1)(a), F.S., and s. 627.7074(11), F.S.

<sup>33</sup> Section 627.7074(4), F.S.

<sup>34</sup> Section 627.7074(2), F.S.

<sup>35</sup> Section 627.7074(5), F.S.

<sup>36</sup> Section 627.7074(4), F.S.

<sup>37</sup> Section 627.7074(7), F.S.

<sup>38</sup> See *id.*

<sup>39</sup> See section 627.7074(2) and (5), F.S.

<sup>40</sup> Section 627.7074(5), F.S.

<sup>41</sup> Section 627.7074(12), F.S.

<sup>42</sup> Section 627.7074(13), F.S.

<sup>43</sup> Section 627.7074(15), F.S.

- A wholly owned subsidiary of an insurer domiciled in any other state, the requirement is at least \$50 million.

Under current law, the surplus requirements for existing insurers are different than the requirements for new insurers. For property and casualty insurers, the requirement is \$4 million, except for property and casualty insurers authorized to underwrite any line of residential property insurance. For residential property insurers not holding a certificate of authority before July 1, 2011, the requirement is \$15 million. For residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016, \$5 million; on or after July 1, 2016, and until June 30, 2021, \$10 million; on or after July 1, 2021, \$15 million.

### **Rate Filings for Property, Casualty, and Surety Insurance**

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., entitled the “Rating Law,” and apply to property, casualty, and surety insurance. The law states that the rates for all classes to which part I applies “shall not be excessive, inadequate, or unfairly discriminatory.”<sup>44</sup> The Office of Insurance Regulation (OIR) has the responsibility to review and approve or disapprove rates charged by insurance companies to ensure compliance with the rate standards.

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the “file and use” method or the “use and file” method. Under “file and use,” the insurer submits its proposed rate to the OIR at least 90 days before the rate’s effective date but does not implement the rate until it is approved. Under “use and file,” the insurer may implement the rate before filing for approval, but must submit the filing within 30 days of the rate’s effective date. Under “use and file,” if a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

The OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- Projected hurricane losses, if applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and

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<sup>44</sup> Section 627.062(1), F.S.



- Other relevant factors impacting frequency and severity of claims or expenses.

### III. Effect of Proposed Changes:

#### **Creation of Limited Sinkhole Coverage Insurance and Application of Current Law to Coverage [s. 627.7151(1) and (2), F.S.]**

The bill creates s. 627.7151, F.S., which allows insurers to offer a new type of sinkhole insurance coverage. Limited sinkhole coverage would, as under current law, only provide coverage for “sinkhole loss” which is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. Limited sinkhole insurance is authorized only for personal lines residential insurance, not commercial lines residential insurance (such as condominium association and homeowners association coverages) or commercial lines insurance. Insurers may exclude from limited sinkhole coverage insurance coverage for contents and additional living expenses. The section created by the bill does not apply to excess coverage for sinkhole loss. Limited sinkhole coverage is subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., except as otherwise provided in the bill.

#### **Scope of Benefits Provided [s. 627.7151(3)(a), F.S.]**

Coverage may be limited to repairs to stabilize the building and repair the foundation in accordance with the recommendations of the professional engineer retained pursuant to s. 627.707(2), F.S. Currently, s. 627.707(5), F.S., directs insurers to pay for building stabilization and foundation repair but also requires that the insurer, “shall pay for other repairs to the structure and contents in accordance with the terms of the policy.” The bill specified that limited sinkhole coverage insurance may be issued that does not provide coverage for “other repairs to the structure and contents.”

The bill retains the current requirement that if the insurer’s professional engineer determines that the repair cannot be completed within policy limits, the insurer must pay to complete the repairs recommended by the insurer’s professional engineer or tender the policy limits to the policyholder. The bill does not retain a provision in s. 627.707(5)(c), F.S., which applies when below-ground sinkhole remediation repairs begin and the engineer selected by the insurer determines that repairs cannot be completed within policy limits. In that situation, the statute requires the insurer to complete the repairs regardless of the policy limit or tender the full policy limit without a reduction for repairs already performed.

#### **Deductibles and Policy Limits [s. 627.7151(3)(b) and (c), F.S.]**

Currently, sinkhole deductibles may only be one percent, two percent, five percent, or ten percent of the dwelling policy limits. Limited sinkhole insurance may contain those deductibles and alternatively may have a deductible in any amount agreed to by the insured and insurer.

The policy limit may be any amount agreed to by the insured and insurer as long as the limit is between \$50,000 and the full replacement cost of the property.

**Required Notice to Policyholders [s. 627.7151(4), F.S.]**

The insurance agent must obtain from an applicant for limited sinkhole insurance a signed acknowledgment that contains the following statement in at least 12-point bold, uppercase type: “BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT APPLY TO MY POLICY.” The signed acknowledgment must also include notices to the policyholder if the policy limit is less than replacement cost or contains a deductible greater than ten percent. The notice for a policy limit less than replacement cost is: “THIS POLICY LIMITS SINKHOLE COVERAGE TO LESS THAN THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY AT RISK.” The notice for a deductible greater than ten percent is: “THIS POLICY EXCEEDS THE DEDUCTIBLE AMOUNT PERMITTED FOR OTHER AUTHORIZED SINKHOLE LOSS INSURANCE POLICIES WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.”

**Exemption from Form and Rate Approval [s. 627.7151(5) and (6)]**

The bill allows insurers to establish limited sinkhole coverage policy forms not subject to filing with and approval by the Office of Insurance Regulation (OIR).

The bill allows insurers to develop rates for the new version of sinkhole insurance created by the bill under the full rate review process provided for in s. 627.062, F.S. Alternatively, the bill allows the use of rates developed by an alternative option if the rate filing is submitted to the OIR before October 1, 2019. Under the alternative option created by the bill, a rate filing for the sinkhole coverage created by the bill is exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S., and the insurer must make an informational filing. In the informational filing, the insurer must notify the OIR of any change to its sinkhole insurance rates, including the average statewide percentage change in rates, no later than 30 days after the effective date of the change in rates. Insurers that utilize this option must maintain actual data regarding its sinkhole insurance rates for two years after the effective date of those rates.

Regardless of the rate filing method used, a rate still cannot be excessive, inadequate, or unfairly discriminatory. The insurer writing the sinkhole insurance is responsible for ensuring the rate charged meets this requirement. The bill allows the OIR to examine an insurer’s documentation supporting a rate to verify the rate meets the requirement with the insurer paying for the examination. During an examination, the OIR uses the rate factors and standards in current law that apply to property, casualty and surety insurance rates filed with the OIR to determine whether the sinkhole insurance rate charged is excessive, inadequate, or unfairly discriminatory. Additionally, the insurer must notify the OIR within 30 days of a rate change for sinkhole insurance that was originally set by this method. Setting sinkhole rates using this method is similar to what is allowed in current law for rates for flood insurance and certain types of commercial lines risks under s. 627.062(3)(d), F.S.

**Surplus Lines [s. 627.7151(7), F.S.]**

Currently, no insurance coverage is eligible for export to a surplus lines insurer unless it meets certain conditions. One condition is that an agent has sought coverage from and received three documented rejections from authorized insurers currently writing the same type of coverage. Until July 1, 2020, the bill allows this new sinkhole coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining three declinations for insurance from Florida licensed sinkhole insurers. This provision tracks the same language in place for flood insurance regarding surplus lines insurers. However, the other requirements governing the exporting of coverage to the surplus lines continue to apply.

**Regulatory Requirements [s. 627.7151(8), F.S.]**

Insurers providing sinkhole coverage must notify the OIR at least 30 days before writing sinkhole insurance in this state. Insurers must also file a plan of operation and financial projections or revisions to such plan, as applicable, with the OIR.

**Assignment of Post-Loss Benefits [s. 627.7151(9), F.S.]**

The bill prohibits a policyholder of a limited sinkhole coverage insurance policy to assign a post-loss claim except to a subsequent purchaser of the property who acquires an insurable interest following a loss.

**Surplus Requirements for Insurers Transacting Only Limited Sinkhole Coverage Insurance [s. 624.407, F.S., and s. 624.408, F.S.]**

The bill reduces the surplus as to policyholder requirements for new and existing insurers that only transact limited sinkhole insurance for personal lines residential property pursuant to s. 627.7151, F.S., to \$7.5 million.

**Effective Date**

The bill is effective July 1, 2016.

**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 economic impact on the private sector is unknown. The limited sinkhole insurance created by the bill may be more readily available in sinkhole-prone areas of the state such as Hillsborough, Pinellas, Pasco, and Hernando counties. If insurers offering this new sinkhole insurance raise deductibles and initiate limits on coverage (sub-limits), policyholders may have lower premiums. However, if a policyholder experienced a sinkhole, the out-of-pocket costs to the policyholder may be higher than if the policyholder has currently existing sinkhole insurance. For policyholders who currently lack sinkhole insurance, the coverage provided by limited sinkhole insurance would reduce out-of-pocket expenses.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.407 and 624.408.

This bill creates section 627.7151 of the Florida Statutes.

**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 9, 2016:**

- Limited sinkhole coverage is not required to insure the contents of personal property or additional living expenses.
- Removes the requirement that contents of personal property be adjusted at replacement cost and not actual cash value.
- Allows for limited sinkhole coverage to repair and stabilize the building and foundation in accordance with the recommendations of a professional engineer. If

repairs cannot be completed within policy limits, the insurer must pay to complete the repairs or tender the policy limits to the policyholder.

- Allows a deductible in an amount agreed to by the insured and insurer.
- Allows policy limits agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property.
- Requires a signed notice by an applicant that they have read and understand the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.
- Allows limited sinkhole insurers to establish their own forms without needing approval by the Office of Insurance Regulation (OIR).
- Removes the prohibition that Citizens must stop writing sinkhole coverage after July 1, 2018.
- Removes the requirement that the Florida Commission on Hurricane Loss Projection Methodology approve sinkhole models.
- Removes an erroneous statement that the Florida Hurricane Catastrophe Fund cannot cover sinkhole loss.

**B. Amendments:**

None.