HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 217 Sinkhole Insurance
SPONSOR(S): Legg and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee		Tinney	Cooper
2) State Administration Appropriations Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

In the United States, damage to the ground under a structure covered by insurance, such as damage from an earthquake, generally is not covered by homeowners' insurance. Since 1981, in Florida, insurers offering property coverage have been required by law to provide coverage for damage resulting from sinkholes, both to covered structures **and** for stabilizing the ground beneath covered structures. Florida has more sinkholes than any other state in the nation.

Sinkholes are a naturally occurring phenomenon as rain and groundwater flow through the top layer of soil into the limestone and dolomite layers that underlay most of Florida. Florida's aquifers, the primary source for fresh water in the state, are located beneath the layer of limestone, i.e., the karst.

While sinkholes occur naturally, meaning some likely would occur in the state even if Florida were uninhabited, sinkholes occur more frequently due to human interaction with the state's natural environment. The counties in the west central portion of the state, i.e., the Tampa Bay area, are particularly prone to sinkhole formation and collapse because the limestone in that area is closer to the surface, thus making the rock layer beneath the surface there more vulnerable to erosion.

Last year, the Legislature enacted several changes to laws governing property insurance in Florida in an attempt to stabilize the market for residential and commercial property. Many of the changes enacted in 2005 may be found in chapter 2005-111, Laws of Florida, including changes to the laws governing coverage for sinkholes in homeowners' policies.

The bill amends the laws governing property insurance claims relating to sinkhole damage. The bill establishes a two-step process, called Phase I and Phase II testing, for verifying the presence of a sinkhole. Both phases of testing require either an engineer or professional geologist to supervise the testing. A written report of findings and recommendations for repair and stabilization of the affected property, including specific requirements for the type of information to be included in the report, are required by the bill.

The bill establishes an alternative process for resolving sinkhole disputes between a policyholder and his or her insurer. The dispute resolution process established by the bill is called a "neutral evaluation." The Department of Financial Services (DFS) is directed to adopt rules to implement the neutral evaluation process. Information introduced during the course of the neutral evaluation is not admissible in subsequent legal actions relating to the sinkhole claim, except when a judge is determining the award of attorney fees. DFS anticipates incurring costs estimated at $95,000 annually to implement the neutral evaluation process. The bill directs the neutral evaluator to issue a non-binding report at the conclusion of the hearing. The report will indicate whether a loss is attributable to a sinkhole or other phenomenon. If a sinkhole loss is verified, the report must include information regarding appropriate methods for stabilizing the land and affected structures, including the associated costs. A policyholder may seek further redress for the disputed claim in court, however, an insurer may not be liable for the policyholder's attorney fees under the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The Department of Environmental Protection is granted authority to adopt rules governing appropriate testing standards to be used by geologists and engineers in determining the presence of a sinkhole (lines 84, 150-151). The bill also grants rulemaking authority to the Department of Financial Services relating to the neutral evaluation process established by the bill as an alternative to a court hearing, (lines 219-220).

Promote Personal Responsibility: The bill eliminates the statutory ability of a policyholder to recoup attorney fees and extra contractual damages relating to a sinkhole claim if the policyholder refuses to participate in the neutral evaluation process or if the policyholder declines to resolve his or her sinkhole claim as recommended by the neutral evaluator.

B. EFFECT OF PROPOSED CHANGES:

Background

A sinkhole is defined in Florida law as a landform created by soil, sediment, and rock subsiding or sinking as underlying layers are dissolved or weakened by groundwater.[1] A sinkhole may form either by the ground collapsing on itself to form a hole or by the ground settling to form a crater or indentation in the soil.

In the U.S., damage to the land under a structure covered by insurance, such as damage from an earthquake, generally is not covered by homeowners' insurance, although coverage for damage from movement of the earth may be purchased as a separate endorsement (or rider) or through a public insurer such as the California Earthquake Authority.[2] Since 1981, in Florida, insurers offering property coverage to homeowners have been required by law to provide coverage for damage resulting from sinkholes, both to covered structures **and** for stabilizing the ground beneath covered structures.[3]

Karst: A Unique Feature of Florida's Geology

Most of Florida is underlain by porous limestone; this underlying layer of limestone, along with the other materials, has resulted in a "karstic" topography. "Karst" is a word used to describe the landforms, or physical features, of the limestone underlying the state and the natural systems draining through the limestone into subsurface aquifers. Familiar forms of drainage systems include streams, rivers, and lakes which cross the land and eventually drain into an ocean, although these are not the most common natural drainage systems in Florida.[4]

Rather than lakes, rivers, and streams, karst terrains such as that present in Florida, are more typified by underground drainage systems consisting primarily of sinkholes, swallets, springs, caves, disappearing streams and underground drainage channels.[5] These underground drainage channels,

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[1] Section 627.706, F.S., 2005.
[2] Insurance Information Institute; "Earthquakes: Risk and Insurance Issues," available at http://www.iii.org/media/hottopics/insurance/earthquake/?printerfriendly=yes, viewed January 18, 2006.
[3] Section 2, chapter 81-280, Laws of Florida (LOF).
[4] Florida Geological Survey, Department of Environmental Protection, *Karst in Florida*, Publication 29, by Ed Lane, available at http://fulltext.fcla.edu/cgi/t/text/text-idx?c=feol;cc=feol;sid=4eb76fb3d085a4a762e338980b51007f;rgn=main;view=text;idno=UF00000145;node=UF00000145%3A1;a=41; p. 2, viewed January 21, 2006.
[5] *Id*.

along with the limestone and sand filters above them, all carry water into the Floridan aquifer and other aquifers. Florida's natural aquifer system supplies 95 percent of the drinking water in the state.[6] Generally, the karst system under the Florida peninsula is several hundred feet thick in the northern part of the state and more than 3,000 feet thick under southern parts of the state.[7]

A karstic topography is a specific landform that develops on rock types, such as limestone and, to a lesser extent, dolomite, that are readily dissolved by water.[8] In addition to Florida and many other parts of the United States, part of Ireland also exists primarily on a karst underlayer, as do the caves at the Mammoth Cave National Park near Bowling Green, KY, and the Greek Islands, along with many other parts of the world.[9]

Sinkhole Formation

Karst is a generic term which refers to the characteristic terrain produced by erosion associated with the mechanical and chemical weathering and dissolution of limestone or dolostone, the two most common carbonate rocks in Florida. Florida has more sinkholes than any other state in the nation.[10]

Erosion begins when the limestone is exposed to acidic water. Most rainwater is slightly acidic and usually becomes more acidic as it moves through decaying plant debris.[11] As acidic water passes through the subsurface rock layers, it wears away or erodes the limestone, thus gradually thinning and weakening the competent rock layers. This desolution, drainage and filtering of groundwater through the rock is a naturally-occurring process, even if humans do not intervene.[12]

The water level of the aquifers rise and fall naturally in response to groundwater levels reflecting seasonal rainfall fluctuations. The groundwater pressure provides hydrostatic support to near-surface rock layers, including sinkhole plugs and subsurface caves filled with water. This changing support typically may result in rock and sediment movement responding to the groundwater pressure head changes. When the water table is lower than average, the limestone layer generally receives less support, thus increasing the opportunity for the ground layer to sink to form either a hole or an indentation in the top layer of ground, i.e., a sinkhole.[13]

Changes to the surface of the land in the state, such as through urbanization and development, also can affect the likelihood of a sinkhole forming. As more land is developed for homes and other buildings and structures, land is cleared and natural drainage systems for rain and other groundwater are altered.[14]

Areas that have been cleared and developed generally reduce the topsoil and overburden, i.e., surface sediments, on top of the subsurface rock aquifer layers. This means there is less ground to filter water before it reaches the limestone, thus potentially increasing the acidity of the water as it reaches the limestone underlayer. Acidity in the water helps dissolve limestone more quickly than water that reaches the subsurface through a thicker layer of topsoil and overburden.[15]

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[6] University of Florida; Institute of Food and Agricultural Sciences (IFAS); *Plant Management in Florida's Waters: Sinkholes*; available at http://aquat1.ifas.ufl.edu/guide/sinkholes.html, viewed January 22, 2006.
[7] University of South Florida; Karst Research Group; *Florida Karst I: Hydrogeologic Framework of the Floridan Aquifer*, available at http://uweb.cas.usf.edu/~vacher/FloridaKarst/FloridaKarstI.htm, viewed January 22, 2006.
[8] Definition found on the website of the Geological Survey of Ireland, available at http://www.gsi.ie/workgsi/groundwater/karstbook/01-what-is.htm, viewed January 20, 2006.
[9] *Id*.
[10] *See supra*, note 6.
[11] Florida Geological Survey, Department of Environmental Protection, available at http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm, viewed January 21, 2006.
[12] *Id*.
[13] *See supra*, note 6
[14] *Id*.
[15] *Id*.

This impact to natural drainage systems is further exacerbated by the increased demand for water for human use and changes in the local watershed run-off characteristics. Further, as water is withdrawn from the aquifer, the stone layer resting on the aquifer loses groundwater hydrostatic support from the bottom at the same time topsoil and overburden are disturbed on top of the land. Thus, sinkhole formation is increased in Florida due to growing population, associated infrastructure and buildings, and the impacts these factors have on the natural aquifer units.[16]

On the surface, sinkholes may develop progressively as subtle, bowl-shaped depressions, or they may collapse suddenly into steeply sided craters, some of which may fill with water. The shape of the sinkhole, and the speed with which it forms, depend on how the sinkhole formed, the size of the underground cavity, and the thickness and material of the overburden (rock, sediments and soils resting on or within the limestone bedrock).[17]

Increase in Sinkhole Appearance in Florida

Sinkhole formation is aggravated and accelerated by urbanization. Development increases water usage, alters drainage pathways, adds weight to the ground surface, and redistributes soil. According to the Federal Emergency Management Agency (FEMA), the number of human-induced sinkholes has doubled since 1930. Similarly, insurance claims from Florida homeowners for damages resulting from sinkholes have increased dramatically both in number and costs over the past 20 years.[18]

Although a sinkhole can form without warning, specific signs can signal potential development. Some potential indications of the presence of a sinkhole include:

- Slumping or falling fenceposts, trees, or foundations;
- Sudden formation of small ponds or loss of water from same;
- Sudden appearance of a crater or hole;
- Wilting vegetation;
- Discolored wellwater;
- Structural cracks in ceiling, walls, and floors.[19]

Sinkholes in Tampa Bay

The seven counties comprising the Tampa Bay area of the state include Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties. The major cities in the seven-county area include the communities of Tampa, St. Petersburg, Clearwater; Lakeland; and Sarasota-Bradenton.[20]

The karstic layer in west-central Florida, i.e., the Tampa Bay area, has unique features when compared to the karst in other parts of the state. Part of the soil that overlays the karst in the Tampa Bay area is more resistant to water filtering through it because the ground in that part of the state has a larger percentage of clay and other less permeable materials. As a result, the karst in west-central Florida has a mottled or mantled appearance.[21] The mottling occurs as water filtering through the karst seeks the easiest path for passing through to the underlying aquifer.

One result of the mantled karst of the Tampa Bay area is the designation of several areas as “lake districts.” Many of the lakes in the region were created when the surface of the ground collapsed into

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[16] *Id*.
[17] *Sinkholes, West-Central Florida: A Link Between Surface Water and Ground Water*; excerpt from USGS Circular 1182. USGS Circular 1182 is entitled *Land Subsidence in the United States* by Galloway, Jones, and Ingebritsen, 1999.
[18] *See supra*, note 6.
[19] *Id*.
[20] Tampa Bay Partnership, homepage, available at http://www.tampabay.org/, viewed January 18, 2006.
[21] *See supra*, note 17, at 124.

the buried karst. These collapses, or indentions later filled with water, thus forming the lakes in the west-central portion of the state.[22]

The Florida Geological Survey and the Florida Sinkhole Database

The Florida Geological Survey (the Survey) within the Department of Environmental Protection is the state agency responsible for identifying, tracking, and investigating mines, minerals, sinkholes, the water supply, and other natural resources in the state. The State Geologist, a registered professional geologist, is designated as the head of the Survey.[23]

The Survey investigates calls from the state's Emergency Operations Center, a part of the Department of Community Affairs. The Emergency Operations Center serves a clearinghouse for emergency situations of all types, including sinkhole activity, throughout the state. In addition, staff of the Survey responds to requests for information and assistance from the public, state and federal agencies, and consultants regarding sinkhole development or potential.

There is currently no single state agency in Florida with responsibility and authority for sinkhole inspections, although the Survey maintains a database of reported sinkholes. The database is available through the website of the Department of Environmental Protection, along with a form to be used to report suspected new sinkholes. The Survey reports it lacks sufficient staff to visit all new sinkholes, although some of the state's water management districts have staff available to check local sinkholes, particularly if they contain water.[24]

The sinkhole database maintained by the Survey dates to the early 1950s, but it contains only those sinkholes officially reported by observers. As a result, the Survey notes the sinkholes reported and included in the database tend to cluster in populated areas where they are readily seen and commonly affect roads and dwellings. However, numerous sinkholes also occur in more remote and less populated areas, many of which go unseen and unreported. As a result, sinkholes that formed earlier than the 1950s may still be unrecorded in the database.[25]

2005 Joint Select Committee on Hurricane Insurance

On January 5, 2005, Senate President Tom Lee and House Speaker Allan Bense appointed the Joint Select Committee on Hurricane Insurance. The joint committee was directed to study all aspects of the property insurance market that promote the availability and affordability of coverage and to make recommendations to stabilize the insurance market in Florida for commercial and residential property.

As part of its investigation and information gathering, members of the joint select committee heard both from insurers and representatives of Citizens Property Insurance Corporation (Citizens) regarding the problem of sinkholes. Testimony to the Joint Select Committee revealed that in the Tampa Bay area, private insurers are non-renewing policies and declining to write new policies due to the exposure to sinkhole claims. As a result, many homeowners in this area have been forced to obtain coverage from Citizens.

Citizens reported to the joint select committee that since 2001, the number of homeowner policies in the Tampa Bay area has dramatically increased when compared to policies in force for the Tampa Bay area at the end of 2004. Citizens acknowledged that it has seen large increases in homeowner policies in Dade, Broward, and Palm Beach counties during the same period, but the increases in the Tampa Bay area are larger than the increases in south Florida or any other region of the state.

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[22] *Id*.
[23] Section 377.075, F.S.
[24] Florida Geological Survey; Department of Environmental Protection; *Sinkholes: Frequently Asked Questions*, available at http://www.dep.state.fl.us/geology/feedback/faq.htm#9, viewed January 22, 2006.
[25] *Id*.

Among the issues highlighted for the Joint Select Committee were the cost to insure against sinkhole-related losses and the increasing costs to remedy damage caused to insured property by sinkholes. Both Citizens and private insurers testified to the Joint Select Committee that the costs associated with sinkholes and property insurance adversely impact both the availability and affordability of homeowner insurance.

Insurers testifying before the Joint Select Committee also indicated a concern about the best method for remediation of sinkhole damage; how to prove property damage results from a sinkhole rather than from ground settling, soil type, or other geological occurrence; and the responsibility to pay the costs for sinkhole testing and remediation, among other related considerations.

Identifying Sinkholes and Repairing Sinkhole Damage

Several geology and engineering firms in the state routinely survey properties reported to insurers for sinkhole claims. The firms perform several types of tests, including sampling soils, photographing damage and features of interest, boring into affected soil and house foundations, among several other tests.

There are also engineering firms who repair foundations and other structures damaged by sinkholes. Methods of repair vary from the simple injection of grout into the hole to more advanced systems of engineered reinforced plugs, pins, and porous concrete. In general, if a repair has been certified by a licensed engineer, and completed to the satisfaction of the homeowner's insurance company, it likely will be safe for the near term. However, as a sinkhole is a natural geological phenomenon, there is no guarantee that a repaired sinkhole will not recur or cause future problems.[26]

2005 Legislative Changes to Laws Governing Sinkhole Insurance

Last year, the Legislature enacted several changes to laws governing property insurance in Florida in an attempt to stabilize the market for residential and commercial property. Many of the changes enacted in 2005 may be found in chapter 2005-111, Laws of Florida, including changes to the laws governing coverage for sinkholes in homeowners' policies.

The major changes enacted in 2005 regarding sinkhole coverage in property insurance policies include:

- Changed definitions for terms used in sinkhole claims;[27]
- Created an inspection, investigation, and testing process for evaluation of sinkhole claims by insurers;[28]
- Required sinkhole claims to be recorded with the property appraiser and disclosed to subsequent purchasers of property affected by sinkholes;[29] and
- Created law recognizing the sinkhole database of the Florida Geological Survey and designated it as the official statewide database of sinkholes, including the expansion and maintenance of the database.[30]

[26] Florida Geological Survey, Department of Environmental Protection, available at http://www.dep.state.fl.us/geology/feedback/faq.htm, viewed January 21, 2006.
[27] Section 17, chapter 2005-111, L.O.F.
[28] Sections 19, 20, and 21, chapter 2005-111, L.O.F.
[29] Section 21, chapter 2005-111, L.O.F.
[30] Section 18, chapter 2005-111, L.O.F.

Current Law and Changes Proposed by the Bill

Several sections of current law govern the requirements for property insurance policies regarding coverage for sinkholes.[31] Definitions relating to sinkhole coverage include such terms as "sinkhole," "sinkhole loss," "sinkhole activity," "engineer," and "professional geologist".[32] None of the definitions is changed or amended by the bill. The bill does not amend law governing the requirement for homeowners' policies to provide sinkhole coverage nor the law governing the database of sinkhole information.

Under current law, every insurer authorized to offer residential or commercial property insurance must make sinkhole coverage available to policyholders.[33] Current law requires insurers to make an initial inspection of the sinkhole claim once the claim is filed with the insurer.[34] If structural damage is discovered in the initial inspection, then the insurer must obtain a written report from a qualified engineer or professional geologist that the cause of the damage is not sinkhole activity in order to deny the claim.[35]

Insurers are not allowed to nonrenew property insurance policies on the basis that a sinkhole claim was filed by the policyholder as long as the claim payment is less than policy limits and the policyholder has repaired the structure.[36] The bill does not change current law regarding coverage for sinkhole claims or nonrenewal of property insurance policies as a result of a sinkhole claim.

Under current law, sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation, as well as repairs to the structure, up to the limits of the policy.[37] It allows an insurer to deny a sinkhole claim if the insurer or its adjuster determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.[38] If an insurer cannot determine the cause of the loss or if the policyholder demands testing, the insurer must engage an engineer and a geologist to conduct testing.[39]

The bill amends s. 627.707, F.S., relating to the standards for investigation of sinkhole claims by insurers. Under the bill, an insurer may pay a contractor or other person designated by the policyholder to perform the land, building, and foundation repairs directly for such repairs. The bill also states that an insurer is not liable for sinkhole stabilization and repairs unless the insurer acknowledges its liability in writing.

Currently, s. 627.7072, F.S., requires sinkhole testing to be conducted in compliance with the standards of the Florida Geological Survey. The law presently requires a geologist or engineer who conducts a sinkhole study to issue a report and certification as to the cause of the loss. If a sinkhole loss is verified, the report on the sinkhole is required to include recommendations for stabilizing the land and building and for repairing the foundation.

Under the bill, testing to determine the presence of a sinkhole will be conducted in compliance with the standards of the American Society for Testing and Materials (ASTM), the U.S. Army Corps of Engineers, the Florida Department of Transportation, or other appropriate standards. The bill authorizes the Department of Environmental Protection (the agency that houses the Florida Geological Survey) to adopt rules specifying the standards for investigating sinkholes.

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[31] See sections 627.706, 627.7061, 627.7065, 627.707, 627.7072, 627.7073, and 627.7077, F.S., 2005.
[32] Section 627.706, F.S.
[33] Section 627.706(1), F.S.
[34] Section 627.707, F.S.
[35] *Id*.
[36] Section 627.707(8), F.S.
[37] Section 627.707(4) and (5), F.S.
[38] Section 627.707(3), F.S.
[39] Section 627.707(3), (4), (5), (6), and (7), F.S.

The bill establishes a two-step process, called Phase I and Phase II testing, for verifying the presence of a sinkhole. Both phases of testing require either an engineer or professional geologist to supervise the testing. Under the bill, Phase I testing includes:

- identification and location of observable damage to the insured property and structures;
- a geophysical survey of the affected property, including the use of specified testing techniques and methods;
- boring into the affected property in two or more sites around the foundation to determine the composition and relative strength of surface soils, including specific measurements and tools;
- excavation of one or two test pits to determine specific information about the foundation of the affected structure;
- preparation of a map of the affected site, including photographs and a written description of findings;
- preparation of a floor slab elevation map; and
- other appropriate tests at the discretion of the engineer or geologist.

If testing conducted under Phase I is inconclusive in determining the presence of a sinkhole or if the initial testing reveals damage other than the type generally associated with a sinkhole, the bill specifies additional testing to be conducted as Phase II of the investigation. A policyholder also has the option under the bill of providing a written request to his or her insurer for Phase II testing. The bill requires Phase II testing also to be conducted under the supervision of an engineer or professional geologist. Under the bill, Phase II testing includes:

- a floor elevation survey to measure variances in the floor elevation;
- at least two invasive penetration borings to determine the composition of the ground beneath the affected structure;
- laboratory analyses of samples found in the upper 20 feet of the ground to determine whether the soil composition may have contributed to the damaged structure; and
- other tests deemed appropriate either by the engineer or geologist.

After completion of the tests specified for Phase I and Phase II of the investigation, the bill requires the engineer or geologist to submit a written report of his or her findings to the insurer. The report is required by the bill to include relative test data and logs, error reports and similar information, as well as other information specified by current law.

Under current law in s. 627.7073, F.S., after completion of the tests to determine the presence of a sinkhole, the engineer or geologist is required to submit a written report of his or her findings to the insurer. Current law specifies the content of the report, regardless of whether the geologist or engineer determines the damage to the structure is due to a sinkhole or other phenomenon.

The bill amends the current law specifying the information to be submitted to the insurer following testing to determine whether a sinkhole exists under the damaged structure. Under the bill, the final report from the geologist or engineer, including findings, opinions, and recommendations, is considered conclusive unless contrary findings and recommendations are proven by clear and convincing evidence.

The bill creates law to establish an alternative process for resolving disputes between a policyholder and his or her insurer relating to sinkhole claims. The dispute resolution process established by the bill is called a “neutral evaluation.” The Department of Financial Services (DFS) is directed by the bill to adopt rules to implement the neutral evaluation process. The bill also directs DFS to certify and maintain a list of neutral evaluators to moderate the dispute process.

The bill requires insurers to notify a policyholder of his or her right to a hearing under the neutral evaluation process. DFS is directed by the bill to prepare a consumer pamphlet describing the neutral

evaluation process. The pamphlet, along with directions and applications, will be distributed to affected policyholders by their respective insurers. The bill specifies that the hearing process should be informal and that formal rules of evidence need not apply. Neither party is required to attend the hearing if a representative is designated to attend in place of either party.

The bill specifies that a qualified engineer or professional geologist may act as a neutral evaluator. However, the bill requires such persons to complete a course in alternative dispute resolution that DFS has approved before serving as a neutral evaluator.

Under the bill, neutral evaluation is optional and nonbinding; either the policyholder or the insurer may refuse to participate. Participation in neutral evaluation will toll the time period for filing suit related to the sinkhole claim for 60 days following the conclusion of the neutral evaluation. Similarly, participation in a neutral evaluation will stay any active legal actions relating to the sinkhole claim. Insurers are required by the bill to pay the costs associated with a neutral evaluation.

The bill requires a neutral evaluation to be held within 45 days after DFS receives the request for a hearing. Neutral evaluation hearings may be conducted by telephone, if possible and convenient. The bill authorizes appropriate staff of DFS to assist policyholders who participate in the hearing without representation by an attorney. Information introduced during the course of the neutral evaluation is not admissible under the bill in subsequent legal actions relating to the sinkhole claim, except when a judge is determining the award of attorney fees.

The bill directs the neutral evaluator to issue a report at the conclusion of the neutral evaluation hearing. The report will indicate whether the evaluator believes a loss is attributable to a sinkhole or other phenomenon. If a sinkhole loss is verified, the report must include information relating to the appropriate methods for stabilizing the land and affected structures, including the estimated costs associated with sinkhole remediation. The bill requires the neutral evaluator to send a copy of the final report to DFS and to all parties participating in the neutral evaluation.

The bill states that the report and recommendations of the neutral evaluator are not binding on the participants in the hearing. This means either the insurer or the policyholder may seek further redress for the disputed claim in court. However, if the policyholder either refuses to participate in neutral evaluation or to resolve the claim as recommended by the neutral evaluator, the insurer will not be liable for the policyholder's attorneys' fees in subsequent legal actions relating to the sinkhole claim.

The bill authorizes a party to neutral evaluation to seek judicial review of the recommendations resulting from the neutral evaluation to determine whether the recommendations are reasonable. The bill specifies that a court must find the recommendations to be reasonable unless they were procured by fraud, corruption, or other undue means. Similarly, if the court determines the neutral evaluator was clearly partial to one or the other party, or if misconduct occurred during the neutral evaluation hearing, then the court is authorized by the bill to vacate the recommendations of the neutral evaluator.

C. SECTION DIRECTORY:

Section 1 names the act the "Sinkhole Insurance Relief Act".

Section 2 amends s. 627.707, F.S., relating to the standards for investigating sinkhole claims by insurers.

Section 3 amends s. 627.7072, F.S., relating to the tests to determine whether a sinkhole exists.

Section 4 amends s. 627.7073, F.S., which specifies the information to be included in a sinkhole report.

Section 5 creates s. 627.7074, F.S., to establish an alternative hearing process to resolve disputed sinkhole claims.

Section 6 provides an effective date of July 1, 2006 for the provisions of the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Financial Services (DFS) is directed by the bill to administer the neutral evaluation process established by the bill. This will include:

   - proposing and adopting rules to implement the alternative method for settling sinkhole disputes between insurers and policyholders;
   - selecting a pool of professional geologists and qualified engineers to serve as neutral evaluators;
   - preparing a consumer pamphlet explaining the neutral evaluation program, including applications and other forms; and
   - providing staff assistance to consumers who participate in a neutral evaluation without the benefit of legal representation.

   DFS estimates the need to hire 2 FTE employees to fulfill the responsibilities assigned by the bill. The first employee, a Management Analyst I, would implement and manage the neutral evaluation process, including selecting mediators and scheduling hearings. The costs associated with this position include a base salary of $27,379; benefits and expenses of $15,986; and non-recurring start-up expenses of $5,243. The total recurring cost for the Management Analyst I is $48,608.[40]

   The department recommends a second FTE, a Consumer Affairs Specialist, to serve as the liaison for consumers who participate in a neutral evaluation without the benefit of an attorney. The costs associated with this position include a base salary of $32,056; benefits and expenses of $17,623; and non-recurring start-up costs of $5,243. The total recurring cost for the Consumer Affairs Specialist is $54,922.[41]

   DFS estimates a total first-year cost of $105,526 for the 2 FTEs. There will be an additional $2,000 expense if the bill is enacted for printing a consumer brochure and forms to explain the neutral evaluation process. The recurring cost for the 2 FTEs is $95,043 annually.[42]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[40] Legislative Bill Analyis from DFS dated January 23, 2006.
[41] *Id*.
[42] *Id*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Three private insurers, State Farm, Allstate, and First Floridian (Travelers) were asked to provide historic data relating to sinkhole claims as part of this bill analysis. Neither State Farm nor First Floridian provided the requested information. Allstate indicated that its experience in Florida is comparable to the information provided by Citizens (see Fiscal Comments section of analysis).

Under the bill, a policyholder may be charged up to $2,500 by his or her insurer related to a sinkhole claim. The changes proposed by the bill at lines 64-66, may result in insurers deciding through their respective homeowners' policies, i.e., the insurance contract, when to charge a policyholder up to $2,500 for costs associated with investigating a sinkhole claim.

Under the bill, insurers are required to pay the costs associated with a neutral evaluation hearing. The associated costs likely will include expenses for the neutral evaluator, costs for teleconference facilities, room rental if a hearing is not held in Tallahassee, and other similar expenses. The costs for such hearings are not quantifiable, however, as the number of evaluators and hearings is not known.

D. FISCAL COMMENTS:

At the end of 2005, Citizens Property Insurance Corporation, the state's insurer-of-last-resort for residential and commercial property, had 149,087 homeowner/personal lines policies in place for the Tampa Bay area. For Citizens, the Tampa Bay area includes five counties: Citrus, Hernando, Hillsborough, Pasco, and Pinellas. The chart which follows shows the increase in policies for this area for the past 4 years.[43]

Personal Lines Account - Policies in Force

Calendar Year	2002	2003	2004	2005
CITRUS	98	1,052	2,228	3,187
HERNANDO	983	7,378	11,367	13,536
HILLSBOROUGH	2,049	20,959	32,328	26,303
PASCO	4,237	25,034	37,772	40,580
PINELLAS	11,283	41,686	58,719	65,481
Total - Five Counties	18,650	96,109	142,414	149,087

Citizens attributes much of the growth in homeowner/personal lines policies for the Tampa Bay area to the growth in the number of sinkhole claims annually in that part of the state, along with the increasing cost to adjust, investigate, and settle those claims. The number of policies is growing in Tampa Bay because private insurers are more reluctant to underwrite sinkhole losses in Florida and the Tampa Bay area has experienced a higher number of sinkhole claims than other areas of the state.[44]

The chart which follows shows the total number of sinkhole claims received by Citizens from 2002-05 for its North Gulf Coast region of the state; this region includes Hernando, Hillsborough, Pasco, and Pinellas counties, four of the five counties considered by Citizens to be in the Tampa Bay area.[45]

Region	Calendar Year	Claims Filed	Net Incurred Loss	Net Incurred LAE	Total	Average Cost per Claim
North Gulf Coast (Hernando, Hillsborough, Pasco, Pinellas; does not include Citrus)	2002	9	$243,050	$43,449	$286,499	$31,833
	2003	277	$7,270,071	$1,329,142	8,599,213	31,044
	2004	753	$32,535,607	$6,618,285	35,153,892	46,685
	2005	582	$53,216,349	$10,211,601	63,427,950	108,983
		1,621	**$93,265,077**	**$18,202,478**	**$111,465,555**	**N/A**

[43] Information provided by Citizens Property Insurance Corporation, dated 1/23/06, on file with House Insurance Committee.
[44] *Id.*
[45] *Id.*

The *Net Incurred Loss* column in the chart above includes the total costs to Citizens to settle the claims, i.e., payments to policyholders for repairs and stabilization. The *Net Incurred Loss Adjustment Expense (LAE)* column shows the costs associated with adjusting the claims for that region. The LAE, which is not part of the Net Incurred Loss column, includes the cost for investigating a claim; hiring geologists and engineers to determine whether a sinkhole exists; stabilizing a home and foundation after verifying the cause for the damage is a sinkhole; and other incidental and legal expenses. The two columns added together represent the **total** payment for each claim.[46]

To the degree the bill causes a decrease in sinkhole claims, Citizens and other property insurers in the state may save costs associated with investigating, adjusting, and settling such claims. The magnitude and impact of the bill is not quantifiable, however.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Environmental Protection is granted authority to adopt rules governing appropriate testing standards to be used by geologists and engineers in determining the presence of a sinkhole (lines 84, 150-151). The bill also grants rulemaking authority to the Department of Financial Services (DFS) in order to implement the neutral evaluation process established by the bill as an alternative to a court hearing (lines 219-220).

C. DRAFTING ISSUES OR OTHER COMMENTS:

For its fiscal impact associated with the bill, DFS estimates the need to hire 2 FTE employees. The estimated salaries for the 2 FTEs are $27,379 and 32,056, respectively, exclusive of benefits and other related expenses. It is unlikely that a candidate familiar either with sinkhole claims and damage or alternative dispute resolution could be hired at the estimated salaries. The personnel hired by DFS to implement the neutral evaluation process created by the bill will be integral to successfully complying with the intent and requirements of the bill. Given that, DFS may wish to reconsider the estimated salaries of the new positions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[46] *See supra*, note 43.