

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 and the reasons for declining coverage;
7 providing legislative findings; requiring the
8 corporation to establish a Citizens Sinkhole
9 Stabilization Repair Program for sinkhole claims;
10 providing definitions; prohibiting the corporation
11 from requiring a policyholder to advance payment for
12 stabilization repairs provided under the program;
13 providing requirements and procedures for selecting
14 stabilization repair contractors to conduct
15 stabilization repairs; requiring stabilization repairs
16 to be conducted pursuant to a contract; providing
17 requirements for such contracts; requiring the
18 policyholder to select a contractor from the pool
19 within a certain time period; specifying additional
20 requirements with respect to the program; requiring
21 the corporation to offer specified deductible amounts
22 for sinkhole loss coverage; amending s. 627.706, F.S.;
23 revising definitions; requiring the Office of Program
24 Policy Analysis and Government Accountability to
25 conduct a study of the program and submit a report to
26 the Governor, the Chief Financial Officer, and the

Page 1 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 Legislature; providing legislative intent; providing
 28 severability; providing an effective date.

29

30 Be It Enacted by the Legislature of the State of Florida:

31

32 Section 1. Paragraph (ee) of subsection (6) of section
 33 627.351, Florida Statutes, is amended, paragraphs (ff) through
 34 (hh) of that subsection are redesignated as paragraphs (hh)
 35 through (jj), respectively, and new paragraphs (ff) and (gg) are
 36 added to that subsection, to read:

37 627.351 Insurance risk apportionment plans.—

38 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

41 1. The total number of requests received for residential
 42 sinkhole loss coverage;

43 2. The total number of policies issued for residential
 44 sinkhole loss coverage;

45 3. The total number of requests declined for residential
 46 sinkhole loss coverage; and

47 4. The reasons for declining requests for residential
 48 sinkhole loss coverage ~~The office may establish a pilot program~~
 49 ~~to offer optional sinkhole coverage in one or more counties or~~
 50 ~~other territories of the corporation for the purpose of~~
 51 ~~implementing s. 627.706, as amended by s. 30, chapter 2007-1,~~
 52 ~~Laws of Florida. Under the pilot program, the corporation is not~~

53 ~~required to issue a notice of nonrenewal to exclude sinkhole~~
54 ~~coverage upon the renewal of existing policies, but may exclude~~
55 ~~such coverage using a notice of coverage change.~~

56 (ff) The Legislature finds that providing a program to
57 repair property damaged by sinkholes safeguards the public's
58 health, safety, and welfare and that it is in the public's
59 interest for sinkhole loss claims to be resolved by stabilizing
60 the land and structure and repairing the foundation of the
61 structure. The Legislature further finds that, in the past, many
62 homeowners who obtained payouts from the corporation for a
63 sinkhole claim did not use the funds to repair or remediate the
64 claimed damage, thereby harming the real estate marketability of
65 their homes and the valuation of other homes in the area.
66 Therefore, the corporation shall establish a Citizens Sinkhole
67 Stabilization Repair Program to ensure repair and remediation of
68 sinkhole damage to homes. By March 31, 2015, any claim against a
69 corporation policy that covers residential sinkhole loss for
70 which it is determined that a covered sinkhole loss has occurred
71 must be included in and governed by the repair program for the
72 purpose of making stabilization repairs. The determination of
73 whether a policyholder has a covered sinkhole loss will be made
74 by the corporation or through neutral evaluation, judicial
75 decree, or final judgment.

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

77 a. "Engineering report" means the report issued pursuant
78 to s. 627.7073(1).

79 b. "Recommendation of the engineer" means the
 80 recommendation of the professional engineer engaged by the
 81 corporation and included in the report pursuant to s.
 82 627.7073(1)(a)5.

83 c. "Sinkhole loss" has the same meaning as provided in s.
 84 627.706(2).

85 d. "Stabilization repair" means stabilizing the land and
 86 structure caused by sinkhole activity and repairing the
 87 foundation of the structure.

88 e. "Stabilization repair contractor" means a contractor
 89 who makes stabilization repairs.

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

92 a. The policyholder may not be required to advance payment
 93 for stabilization repairs.

94 b. Stabilization repairs must be conducted by a
 95 stabilization repair contractor selected from an approved
 96 stabilization repair contractor pool procured by the corporation
 97 pursuant to an open and transparent process. The pool must be
 98 sufficiently comprehensive to provide competition and
 99 inclusiveness. A pool with a minimum of 12 contractors shall be
 100 presumed to be competitive and inclusive. Each contractor within
 101 the pool must be qualified and approved by the corporation based
 102 on criteria that include the following requirements:

103 (I) The stabilization repair contractor corporate entity
 104 must demonstrate experience in the stabilization of sinkhole

105 activity pursuant to requirements established by the
 106 corporation.

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

109 (III) The stabilization repair contractor must demonstrate
 110 capacity to be bonded and provide performance, surety, or other
 111 bonds as described in this paragraph, which may be supplemented
 112 by additional requirements as determined by the corporation.

113 (IV) The stabilization repair contractor must demonstrate
 114 that it has obtained all insurance required by law, including,
 115 but not limited to, public liability, property damage, and
 116 workers' compensation insurance.

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

119 (VI) Such other requirements consistent with s. 287.057.

120 c. Stabilization repair contractors shall be selected from
 121 the approved stabilization repair contractor pool to stabilize
 122 the land and structure and repair the foundation of the
 123 structure in accordance with the recommendation of the engineer
 124 pursuant to a contract between the contractor and the
 125 corporation. Such contracts are not subject to paragraph (e) or
 126 s. 287.057. Pursuant to the terms of the contract, the selected
 127 contractor is solely responsible for the performance of all
 128 necessary stabilization repairs specified in the engineering
 129 report and the recommendation of the engineer.

130 d. The corporation shall develop a standard stabilization

131 repair contract for the purpose of stabilizing the land and
132 structure and repairing the foundation of the structure in
133 accordance with the recommendation of the engineer for all
134 properties within the repair program. At a minimum, the contract
135 must require:

136 (I) The assigned stabilization repair contractor to
137 complete all stabilization repairs identified in the engineering
138 report based on line-item prices developed by the corporation
139 which reasonably reflect actual market prices for sinkhole
140 stabilization activities.

141 (II) Each stabilization repair contractor to post a
142 payment bond, secured by a third-party surety, in favor of the
143 corporation as obligee for each project assigned and to post a
144 performance bond, secured by a third-party surety, in favor of
145 the corporation as obligee for each project assigned. The amount
146 of the payment bond and performance bond shall be equal to the
147 amount of each project contract.

148 (III) The stabilization repair contractor to provide a
149 warranty to the policyholder, secured by an authorized insurer
150 or registered risk retention group, which covers all repairs
151 provided by the stabilization repair contractor for at least 5
152 years after completion of the stabilization repairs. If, for any
153 contract, the stabilization repair contractor demonstrates that
154 a warranty that is secured by an authorized insurer or
155 registered risk retention group cannot be procured, or that such
156 warranty cannot be procured for a cost equal to or less than 3

157 percent of the stabilization repair contract amount, the
158 corporation shall serve as the guarantor of the work performed
159 by the contractor. The corporation shall also provide a warranty
160 to the policyholder which covers all repairs provided by the
161 stabilization repair contractor for at least 5 years if the
162 stabilization repair contractor is unable to provide a remedy
163 required under the warranty it provided to the policyholder.

164 (IV) That, throughout the course of the stabilization
165 repairs performed by the contractor, the professional engineer
166 monitor the property and confirm that stabilization has been
167 satisfactorily completed and that no further stabilization is
168 necessary to remedy the damage identified in the engineering
169 report and the recommendation of the engineer.

170 (V) That the stabilization repair contractor notify the
171 corporation if the professional engineer concludes that
172 additional stabilization repairs are necessary to complete the
173 repairs specified in the engineering report and the
174 recommendation of the engineer. If repairs can be completed
175 within policy limits, the stabilization repair contractor shall
176 complete the additional repairs based on the line-item prices
177 developed by the corporation. The contract must also contain
178 provisions specifying the remedy and sanctions for failing to
179 perform the additional repairs.

180 e. The corporation shall enter into contracts with
181 qualified stabilization repair contractors to perform repairs.
182 The policyholder shall have up to 30 days to select a

183 stabilization repair contractor from the pool. If the
184 policyholder fails to make a selection within 30 days, the
185 corporation shall make a selection.

186 3. The corporation is not responsible for serving as a
187 stabilization repair contractor. The corporation's obligations
188 under the repair program are not an election to repair by the
189 corporation and therefore do not imply or create a new
190 contractual relationship with the policyholder.

191 4. The corporation's liability related to stabilization
192 repair activity pursuant to the repair program and all other
193 repairs to the structure conducted in accordance with the terms
194 of the policy may not be greater than the policy limits on the
195 structure.

196 5. The corporation shall pay for other repairs to the
197 structure and contents in accordance with the terms of the
198 policy.

199 6. If the professional engineer engaged by the corporation
200 determines that the stabilization repair cannot be completed
201 within policy limits, the corporation must pay to complete the
202 stabilization repair recommended by the corporation's
203 professional engineer or tender the policy limits to the
204 policyholder without a reduction for the repair expenses
205 incurred and subject to any dual interest noted on the policy.

206 7. Once there has been an adjudication of a litigated
207 sinkhole property damage claim and an order has verified
208 sinkhole loss and adjudicated whether repairs must be made,

209 including repairs other than or in addition to those in the
210 recommendation of the engineer, stabilization repairs must be
211 completed within a reasonable period of time. Property owners
212 must provide notice of any dissatisfaction with regard to the
213 effectiveness of repairs within 45 days after completion of the
214 repairs. To facilitate timely repairs and remediation, the
215 corporation shall respond to such notice within 30 days. If
216 policy limits are tendered pursuant to subparagraph 6., such
217 proceeds shall be made payable to the policyholder, subject to
218 any dual interest noted on the policy.

219 8. This paragraph does not prohibit the corporation from
220 establishing a managed repair program for other repairs to the
221 structure in accordance with the terms of the policy.

222 9. This paragraph supersedes s. 627.707(5)(a)-(d).

223 10. This paragraph does not alter the procedure for
224 engaging a professional engineer specified under s. 627.707.

225 (gg) As a component of the stabilization repair program
226 set forth in paragraph (ff), a policy for residential property
227 insurance issued by the corporation must include a deductible
228 applicable to sinkhole losses which shall be offered in amounts
229 equal to 2 percent, 5 percent, and 10 percent of the policy
230 dwelling limits, with appropriate premium discounts offered with
231 each deductible amount. However, for the purposes of determining
232 eligibility pursuant sub-subparagraphs (c)5.a. and b. and s.
233 627.3518(5), the term "comparable coverage" for sinkhole losses
234 means a 10-percent deductible regardless of the deductible

235 selected by a corporation policyholder.

236 Section 2. Paragraphs (c) and (f) of subsection (2) of
237 section 627.706, Florida Statutes, are amended to read:

238 627.706 Sinkhole insurance; catastrophic ground cover
239 collapse; definitions.—

240 (2) As used in ss. 627.706-627.7074, and as used in
241 connection with any policy providing coverage for a catastrophic
242 ground cover collapse or for sinkhole losses, the term:

243 (c) "Neutral evaluator" means an a~~professional~~ engineer
244 licensed under chapter 471 with experience and expertise in the
245 identification of sinkhole activity as well as other potential
246 causes of structural damage or a professional geologist. The
247 engineer or professional geologist must have ~~who has~~ completed a
248 course of study in alternative dispute resolution designed or
249 approved by the department for use in the neutral evaluation
250 process, must be ~~and who is~~ determined by the department to be
251 fair and impartial, and must not be otherwise ineligible for
252 certification as provided in s. 627.7074.

253 (f) "Professional engineer" means a person, as defined in
254 s. 471.005, who has a bachelor's degree or higher in
255 engineering. A professional engineer must also have experience
256 and expertise in the identification of sinkhole activity or ~~as~~
257 ~~well as~~ other potential causes of structural damage.

258 Section 3. By January 1, 2017, the Office of Program
259 Policy Analysis and Government Accountability shall review the
260 Citizens Sinkhole Stabilization Repair Program and submit a

261 report to the Governor, the Chief Financial Officer, the
262 President of the Senate, and the Speaker of the House of
263 Representatives. The report must:

264 (1) Analyze policyholder satisfaction with stabilization
265 repairs received through the program and the sufficiency of
266 consumer protections provided by the program.

267 (2) Analyze the timeliness of stabilization repairs in
268 comparison with industry averages and practices. The report must
269 evaluate the loss costs associated with sinkhole claims under
270 the program, comparing them with the corporation's loss costs
271 before the program's creation.

272 (3) Evaluate whether disputes between stabilization repair
273 contractors and policyholders are resolved in an effective and
274 timely manner.

275 (4) Evaluate whether litigation of sinkhole claims and
276 associated costs are increasing or decreasing under the program
277 and the causes of such litigation.

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

280 Section 4. If any provision of this act or the application
281 thereof to any person or circumstance is held invalid, such
282 invalidity shall not affect other provisions or applications of
283 this act which can be given effect without the invalid provision
284 or application. It is the express intent of the Legislature to
285 enact multiple important but independent reforms to Florida law
286 relating to sinkhole insurance coverage provided by Citizens

CS/HB 129

2014

287 Property Insurance Corporation and related claims. The
288 Legislature further intends that the multiple reforms in the act
289 could and should be enforced if one or more provisions are held
290 invalid. To this end, the provisions of this act are declared
291 severable.

292 Section 5. This act shall take effect July 1, 2014.