

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 541 Sinkhole and Catastrophic Ground Cover Collapse Insurance  
**SPONSOR(S):** Zika and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Luczynski
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Since 1981, insurers offering property coverage in Florida had been required by law to provide coverage for property damage from sinkholes. Sinkhole claims increased in frequency and costs, and in 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse (CGCC), rather than all sinkhole loss, in the base property insurance policy. CGCC is a severe form of sinkhole loss. Under current law, CGCC means geological activity that results in all of 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.

Insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.

The bill amends the statutory definition of CGCC by adding a fifth factor and allowing a policyholder to satisfy the definition and to make a CGCC claim by meeting less than all five factors. Under the amended definition of CGCC, a policyholder may meet the required factors by having geological activity that results in at least one of the following two factors: the imminent collapse of the ground cover or a depression in the ground cover clearly visible to the naked eye; and at least one of the following three factors: structural damage to the coverage building; or the insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue an order for that structure; or condemned and declared dangerous and a real and imminent threat to public safety by a professional engineer licensed in Florida in a written notice to the governmental agency authorized with code enforcement for the structure. The amended definition of CGCC somewhat, if not completely, causes CGCC coverage to subsume sinkhole coverage, thereby effectively making sinkhole coverage mandatory in all property insurance policies.

The bill has no fiscal impact on local government or state revenues. It may have a negative impact on state expenditures. The bill should have significant negative direct economic impact on the private sector from increased claims and related expenses, including expert and attorney fees being passed on to policyholders in the form of rate increases.

The bill has an effective date of July 1, 2019, but the substantive provisions established in the bill apply to all property insurance policies written or renewed in Florida on or after July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

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, suburbanization, water usage, and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida had been required by law to provide coverage for property damage from sinkholes.<sup>2</sup> Sinkhole claims increased in frequency and costs, and in 2007, Florida law was amended to require insurers in Florida to cover only CGCC, rather than all sinkhole loss, in the base property insurance policy.<sup>3</sup> CGCC is a severe form of sinkhole loss. Under current law, CGCC means geological activity that results in all of 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 CGCC and sinkhole loss coverage to the property's principal building. However, by law, Citizens Property 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: 1 percent, 2 percent, 5 percent, or 10 percent of policy dwelling limits.<sup>7</sup> 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 10 percent sinkhole loss deductible.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.<sup>8</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>9</sup>

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

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

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

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

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

<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> S. 627.706(1)(b), F.S.

<sup>8</sup> Chs. 2005-111, 2006-12, and 2011-39, Laws of Fla.

<sup>9</sup> *Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation*, Nov. 8, 2010,

[http://www.floir.com/siteDocuments/Sinkholes/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.floir.com/siteDocuments/Sinkholes/2010_Sinkhole_Data_Call_Report.pdf) (last visited Mar. 22, 2019). While OIR has not conducted an

These increases impacted the financial stability of property insurers in Florida, including Citizens, and were used by insurers to justify property insurance rate increases. In comparison, the number of CGCCs over the same period of time amounted to just 1 percent of the sinkhole-type claims.<sup>10</sup> The table below shows the data gathered by OIR for this time period:<sup>11</sup>

Type of Claim	Closed Claims Reported	Percentage	Average Payment of Closed Claims
Sinkhole (Subsidence)	8,744	56.7%	\$140,094
Other	6,288	39.8%	\$102,319
Clay Shrinkage	472	2.4%	\$124,933
Sinkhole (CGCC)	118	1.1%	\$149,491

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 property while providing more certainty in sinkhole claims for property and insurers in terms of coverage, costs, repairs, and exposure.

The first complete year the reforms were in effect was 2012.<sup>12</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 their 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>13</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>14</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.

According to data from Citizens,<sup>15</sup> in 2013, new sinkhole claim volume was down 61 percent from 2012. Also, Citizens had 54 percent fewer pending sinkhole claims in 2013 than 2012. Paid indemnity, outstanding indemnity reserves, and loss adjustment expenses paid to date for sinkhole claims filed against Citizens had also decreased in 2013 when compared to 2012. This declining trend continued into 2014 and 2015 and, according to Citizens, is attributable largely to the major sinkhole claims reform enacted in 2011.<sup>16</sup>

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updated data call since 2010, it has indicated an understanding that a CGCC is an "extremely rare occurrence." Email from Derek Silver, Deputy Legislative Affairs Director, OIR, RE: Inquiry (Feb. 26, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The reforms were effective on May 17, 2011 when the bill (CS/CS/CS/SB 408) was signed by the Governor.

<sup>13</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?version=1.0&inheritRedirect=true](https://www.citizensfla.com/documents/20702/643634/07AH_Citizens_SB408_Sinkhole_Analysis.pdf/a26f62af-b142-4b5c-aed2-35821603c1a0?version=1.0&inheritRedirect=true) (last visited Mar. 22, 2019).

<sup>14</sup> Information on Citizens' 2014 rate filing is available at

<https://www.citizensfla.com/documents/20702/124817/2014+Rate+Hearing+Kit.pdf/cefda4c9-80fc-490f-8a84-2598e2c4c9f4> (last visited Mar. 22, 2019).

<sup>15</sup> Data is as of the end of September 2013 and is available in meeting materials from the Citizens' Claims Committee meeting on Nov. 14, 2013,

available at [https://www.citizensfla.com/-/20131114-claims?redirect=https%3A%2F%2Fwww.citizensfla.com%2Fsearch-results%3Fp\\_id%3D3%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dmaximized%26p\\_p\\_mode%3Dview%26\\_3\\_redirect%3D%252Fhome%26\\_3\\_keywords%3Dclaims%2Bmeeting%2Bnovember%2B14%252C%2B2013%26\\_3\\_groupId%3D20702%26\\_3\\_struts\\_action%3D%252Fsearch%252Fsearch&inheritRedirect=true](https://www.citizensfla.com/-/20131114-claims?redirect=https%3A%2F%2Fwww.citizensfla.com%2Fsearch-results%3Fp_id%3D3%26p_p_lifecycle%3D0%26p_p_state%3Dmaximized%26p_p_mode%3Dview%26_3_redirect%3D%252Fhome%26_3_keywords%3Dclaims%2Bmeeting%2Bnovember%2B14%252C%2B2013%26_3_groupId%3D20702%26_3_struts_action%3D%252Fsearch%252Fsearch&inheritRedirect=true) (last visited Mar. 22, 2019).

<sup>16</sup> *Citizens Property Insurance Corporation Actuarial & Underwriting Committee Recommended Rate Filing Executive Summary*, Jun. 23, 2015 at [https://www.citizensfla.com/documents/20702/27059/02\\_2016\\_Annual\\_Recommended\\_Rate\\_Filing\\_Exec\\_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0?version=1.1&inheritRedirect=true](https://www.citizensfla.com/documents/20702/27059/02_2016_Annual_Recommended_Rate_Filing_Exec_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0?version=1.1&inheritRedirect=true) (last visited Mar. 12, 2019).

## Sinkhole Insurance

Current law regarding sinkhole insurance includes the following requirements:<sup>17</sup>

- Every property insurer must provide coverage for CGCC;
- Each property insurer must offer coverage for sinkhole loss, for an appropriate additional premium, on any structure including the contents of personal property; and
- A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

There are four terms in statute that, when read together, describe what is currently meant by sinkhole insurance.<sup>18</sup> These terms are:

1. “Sinkhole” means a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.
2. “Sinkhole activity” means settlement or systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.
3. “Sinkhole loss” means structural damage to the covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses apply only if there is structural damage to the covered building caused by sinkhole activity.
4. “Structural damage” means a covered building, regardless of the date of its construction, has experienced the following:
  - (a) Interior floor displacement or deflection in excess of acceptable variances as defined in American Concrete Institute (ACI) 117-90<sup>19</sup> or the Florida Building Code, which results in settlement-related damage to the interior such that the interior building structure or members become unfit for service or represents a safety hazard as defined within the Florida Building Code;
  - (b) Foundation displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement-related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support to the extent that stresses in those primary structural members or primary structural systems exceeds one and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;
  - (c) Damage that results in listing, leaning, or buckling of the exterior load-bearing walls or other vertical primary structural members to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;
  - (d) Damage that results in the building, or any portion of the building containing primary structural members or primary structural systems, being significantly likely to imminently collapse because of the movement or instability of the ground within the influence zone of

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<sup>17</sup> S. 627.706, F.S.

<sup>18</sup> S. 627.706(2)(h)–(k), F.S.

<sup>19</sup> The American Concrete Institute develops and distributes consensus based standards for concrete design, construction and materials. More information and copies of their standards documents are available at <https://www.concrete.org/aboutaci.aspx> (last visited Mar. 22, 2019).

- the supporting ground within the sheer plane necessary for the purpose of supporting such building as defined within the Florida Building Code; or
- (e) Damage occurring on or after October 15, 2005, that qualifies as “substantial structural damage” as defined in the Florida Building Code.

Under current law, sinkhole insurance means coverage for sinkhole loss which includes “structural damage” caused by “sinkhole activity.” The definition of sinkhole does not include either term. To file a sinkhole claim and recover payment, there must be structural damage to the covered building, including the foundation, caused by sinkhole activity. If a homeowner only has a “sinkhole” as that term is currently defined, the policyholder will not be covered.

## Effect of Proposed Changes

### Expanded Definition of CGCC

A CGCC is currently defined as geological activity that results in all four of the statutory factors listed in section 627.702(2)(a).<sup>20</sup> The bill adds a fifth factor, the insured structure being declared dangerous and a real and imminent threat to public safety by a professional engineer licensed in this state in a written notice to the governmental agency authorized by law with code enforcement for that structure. The bill amends the statutory definition of CGCC to allow a policyholder to satisfy the definition and to make a CGCC claim by meeting less than all five statutory factors. This significantly increases what would qualify as a CGCC.<sup>21</sup>

Under the amended definition of CGCC, a policyholder may have a claim for CGCC by having geological activity that meets one factor related to the geological activity and one factor related to the impact of the geological activity on the insured structure or its effect on the status of the insured structure as follows:

- Geological activity that results in one of the following two factors:
  - The imminent collapse of the ground cover; or
  - A depression in the ground cover clearly visible to the naked eye; and
- The insured structure meeting one of the following three factors:
  - Structural damage to the coverage building; or
  - Being condemned and ordered to be vacated by the governmental agency authorized by law to issue an order for that structure; or
  - Being declared dangerous and a real and imminent threat to public safety by a professional engineer licensed in Florida in a written notice to the governmental agency authorized with code enforcement for the structure.

The bill provides that the term “dangerous” has the same meaning as provided in the Florida Building Code, Building Volume.<sup>22</sup>

The amended definition of CGCC somewhat, if not completely, causes CGCC coverage to subsume sinkhole coverage.<sup>23</sup> Because CGCC coverage is mandatory in all property policies in Florida,<sup>24</sup> by

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<sup>20</sup> S. 627.706(2)(a), F.S.

<sup>21</sup> Email from Christine Ashburn, Chief of Communications, Legislative, and External Affairs, Citizens, RE: PreSB408: Sinkhole’s devastating impact on Citizens’ surplus and actuarially sound sinkhole premium (Mar. 22, 2019).

<sup>22</sup> Section 202 Florida Building Code Sixth Edition, Building

**DANGEROUS.** Any building, structure or portion thereof that meets any of the conditions described below shall be deemed dangerous:

1. The building or structure has collapsed, has partially collapsed, has moved off its foundation or lacks the necessary support of the ground.
2. There exists a significant risk of collapse, detachment or dislodgment of any portion, member, appurtenance or ornamentation of the building or structure under service loads.

International Code Council, 2017-Florida Building Code-Existing Building, <https://codes.iccsafe.org/content/FEBC2017/chapter-2-definitions> (last visited Mar. 23, 2019).

<sup>23</sup> Ashburn, *supra* note 21.

<sup>24</sup> S. 30, Ch. 2007-1, Laws of Fla.

subsuming sinkhole coverage, the amended definition of CGCC would effectively make sinkhole coverage mandatory in all property insurance policies.

#### Expanded Definition of CGCC Related to Citizens

At present, Citizens excludes sinkhole coverage in its base property insurance policy and offers sinkhole coverage that can be purchased for an additional premium. Except for sinkhole coverage, Citizens annual rate increases may not exceed 10 percent for any single policy, which is also referred to as the “glide path.”<sup>25</sup> The amended definition of CGCC, which effectively includes sinkhole coverage in Citizens base property insurance policy, also has the effect of subjecting sinkhole coverage to the annual 10 percent rate cap. Because statewide Citizens rates regularly hit the “glide path” maximum, every Citizens policyholder will effectively receive sinkhole coverage without Citizens charging an actuarially-supported rate.

#### Expanded Definition of Damage Related to CGCC

At present damage consisting only of settling or cracking of a foundation, structure, or building does not constitute a loss resulting from ground cover collapse. Additionally, contents coverage only applies if there is a loss resulting from CGCC.

The bill expands the definition of damage from a CGCC by providing that damage consisting of settling or cracking of a foundation, structure, or building does constitute a loss resulting from CGCC if the structure or building has been ordered to be vacated or has been declared dangerous by a professional engineer or government agency responsible for code enforcement. Under the bill, contents coverage is expanded to allow a policyholder to make a claim for contents coverage, where there is settling or cracking along with a determination by an engineer or government authority that the covered structure or building should be vacated or is dangerous.

#### Effective Date

While the bill has an effective date of July 1, 2019, the amendments that it makes to s. 627.706, F.S., apply to all new and renewal property insurance policies issued on or after July 1, 2020. The changes as a result of this bill will require all property insurers to file new policy rates and forms for approval by OIR.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.
- Section 2:** Establishes that the amendment to s. 627.706, F.S., applies to new and renewal property Insurance policies issued on or after July 1, 2020.
- Section 3:** Provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>25</sup> The “glide path” is the statutory cap that limits Citizens annual rate increases to no more than 10 percent for any single policy. This is an exception to the requirement for actuarially sounds rates and does not apply to sinkhole coverage under current law. Citizens, *2018 Rate Kit*, <https://www.citizensfla.com/documents/20702/4794283/2018+Rate+Kit/022a1c4d-5b76-4438-8ef6-5b3b044b03c7> (last visited Mar. 23, 2019). See also s. 627.351(6)(n)6, F.S.

As a result of the additional coverage provided by this bill, all property insurers writing property policies in Florida will be required to file new forms and rates for approval by OIR. While OIR has not provided any specific information regarding the financial impact of the review required, it is possible that it will have a significant impact due the number of property insurers writing property policies in Florida and the extensive review that is required each time a form or rate filing is made.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will have a significant negative direct economic impact on the private sector. Citizens has opined that the revisions proposed by this bill will “lead to a wide-ranging, far more damaging situation for the industry and . . . policyholders in the way of premium increases and availability of affordable coverage.”<sup>26</sup> The bill will likely result in increased claims and related expenses, including expert and attorney fees, which would be expected to be passed on to policyholders in the form of rate increases.

While there is a potential for increased costs for everyone else, policyholders currently paying for sinkhole coverage in the high risk areas of Florida will effectively receive subsidized sinkhole coverage as a result of the bill. Because the expanded CGCC coverage provided by the bill effectively subsumes sinkhole coverage, individuals who have purchased stand-alone sinkhole coverage may decide they no longer need to maintain these policies. Additionally, individuals in sinkhole-prone areas who do not currently have separate sinkhole coverage will effectively receive it.

**D. FISCAL COMMENTS:**

Due to the significant changes to sinkhole and CGCC coverage that the passage of this bill would cause to all property policies in Florida, including those issued by Citizens, the full financial impact of this bill is indeterminate.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires administrative rulemaking.

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<sup>26</sup> Ashburn, *supra* note 21.  
**STORAGE NAME:** h0541.IBS  
**DATE:** 3/23/2019

## C. DRAFTING ISSUES OR OTHER COMMENTS:

### Issues with Bill Intent

In 2011, in SB 408, the Legislature found and declared:

There is a compelling state interest in maintaining a viable and orderly private-sector market for property insurance in this state. The lack of a viable and orderly property market reduces the availability of property insurance coverage to state residents, increases the cost of property insurance, and increases the state's reliance on a residual property insurance market and its potential for imposing assessments on policyholders throughout the state.

In 2005, the Legislature revised ss. 627.706–627.7074, Florida Statutes, to adopt certain geological or technical terms; to increase reliance on objective, scientific testing requirements; and generally to reduce the number of sinkhole claims and related disputes arising under prior law. The Legislature determined that since the enactment of these statutory revisions, both private-sector insurers and Citizens Property Insurance Corporation have, nevertheless, continued to experience high claims frequency and severity for sinkhole insurance claims. In addition, many properties remain unrepaired even after loss payments, which reduces the local property tax base and adversely affects the real estate market. Therefore, the Legislature finds that losses associated with sinkhole claims adversely affect the public health, safety, and welfare of this state and its citizens.<sup>27</sup>

By effectively causing sinkhole coverage to be mandatory in all property insurance policies, the bill would likely undo most of the sinkhole reform implemented by the Legislature in 2005, 2006, and 2011.

According to an analysis from Citizens, revisions done to existing sinkhole law as a result of the bill would allow a “work around” from the existing statutory and policy requirements for sinkhole-type claims.<sup>28</sup> As the bill is currently drafted, almost every sinkhole peril would become classified as a CGCC. Whether or not intended, the consequences of this drafting include the shift from sinkhole as an optional coverage back to a mandatory coverage included in every property insurance policy.<sup>29</sup> This would result in significant increases in premium, and, perhaps, property insurers not wanting to write policies in sinkhole-prone areas of Florida.<sup>30</sup>

### Drafting Issues

The additions and deletions of the conjunctions “and” and “or” in lines 22 through 30 may cause confusion. A plausible reading of this portion of the bill might lead to the belief that meeting only one of the criteria for CGCC needs to be met in order to sustain a claim. Meeting two or more criteria for CGCC in order to sustain a claim already expands coverage. Loosening the criteria further and only requiring a claimant to meet one factor expands coverage to an even-greater degree.

The shift from the use of the phrase “abrupt collapse” in current statute to “imminent collapse” in line 22 of the bill changes the entire intent of CGCC coverage, that is to be coverage for a catastrophic event. At present this coverage requires an actual collapse of the ground. However, removing “abrupt” and replacing it with “imminent” would mean that collapse of the ground, whether catastrophic or simply sinkhole activity, is no longer necessary in order to make a claim for CGCC under a property insurance policy.

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<sup>27</sup> *Supra* note 12.

<sup>28</sup> Ashburn, *supra* note 21.

<sup>29</sup> Email from Derek Silver, Deputy Legislative Affairs Director, OIR, RE: Inquiry (Feb. 26, 2019).

<sup>30</sup> *Id.*

The use of the phrase “clearly visible to the naked eye” in lines 23 and 24 of the bill lacks any set criteria, which leaves it open to wide interpretation. Likewise, the phrase “real and imminent” in line 31 of the bill lacks any definition and is also left open to wide interpretation. The confusion over the definitions of these terms may result in litigation as the property insurance industry tries to establish criteria for the terms.<sup>31</sup> If courts are unable to resolve these conflicts, they may look to the legislature to do so.<sup>32</sup>

Lines 44 through 46 of the bill explain that the term “dangerous” as used in that paragraph has the same meaning as “dangerous” in the Florida Building Code. Part of that definition includes a “significant risk of collapse, detachment or dislodgement of any. . . appurtenance or ornamentation of [the] building or structure under service loads.”<sup>33</sup> Based upon this definition, the risk of an ornamentation on a covered structure falling off and causing damage qualifies as dangerous. This dangerous situation coupled with a visible depression on a property would meet the amended definition of a CGCC. However, this may not be the intended result of the bill.

### Implementation Issues

The amended definition of CGCC introduces the undefined term “imminent” and makes the phrase “depression in the ground cover” a CGCC factor without the requirement for an “abrupt collapse of the ground cover.” These changes are contrary to the established scientific basis for sinkhole claims.<sup>34</sup> Consequently, it is likely that the meaning of the term “imminent” and what qualifies as a “depression in the ground cover” will increase the cost of claims, including experts and attorneys.

Reading the bill in conjunction with the remainder of the existing provisions in ss. 627.706 and 627.707, F.S., is also problematic because the definition does not fit with the existing statutory construct for sinkhole claims. For example, s. 627.706(3), F.S., requires insurers to include a statement on policies that exclude coverage for sinkhole losses that informs policyholders that their policies provide “coverage for a CGCC that results in the property being condemned and uninhabitable.”<sup>35</sup> However, including this statement conflicts with the amended definition of CGCC.

It is unclear from reading the bill how investigation, claims handling, testing, reporting, and disclosure will be handled for the expanded CGCC coverage. Current law regarding sinkhole claims requires a homeowner with sinkhole activity on the homeowner’s property to file a report with the county clerk of court for the county where the property is located.<sup>36</sup> Based upon the drafting of the bill, a policyholder could avoid the conclusion that sinkhole activity occurred on the property and thus avoid the reporting requirement by filing a CGCC claim for sinkhole activity.

As the amended criteria for meeting the definition of CGCC may include a declaration by a professional engineer, claims will also involve increased litigation costs including a “battle of the experts” between an engineer hired by a policyholder and one hired by the insurer.<sup>37</sup> No current alternative dispute resolution adequately address the claims resulting from this bill. As the bill is written, where a claim is established under the new criteria for CGCC, there is no established protocol to remediate the problem that resulted in the loss. The bill is silent on what must be done following receipt of payment for the claim.

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<sup>31</sup> Ashburn, *supra* note 21.

<sup>32</sup> *Id.*

<sup>33</sup> International Code Council, *supra* note 22.

<sup>34</sup> See ss. 627.706 and 627.707, F.S.

<sup>35</sup> S. 627.706(3), F.S.

<sup>36</sup> S. 627.7073, F.S.

<sup>37</sup> Ashburn, *supra* note 21.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES