



300080

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

627.351 Insurance risk apportionment plans.-



300080

11 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

14 1. The total number of requests received for residential  
15 sinkhole loss coverage;

16 2. The total number of policies issued for residential  
17 sinkhole loss coverage;

18 3. The total number of requests declined for residential  
19 sinkhole loss coverage; and

20 4. The reasons for declining requests for residential  
21 sinkhole loss coverage ~~The office may establish a pilot program~~  
22 ~~to offer optional sinkhole coverage in one or more counties or~~  
23 ~~other territories of the corporation for the purpose of~~  
24 ~~implementing s. 627.706, as amended by s. 30, chapter 2007-1,~~  
25 ~~Laws of Florida. Under the pilot program, the corporation is not~~  
26 ~~required to issue a notice of nonrenewal to exclude sinkhole~~  
27 ~~coverage upon the renewal of existing policies, but may exclude~~  
28 ~~such coverage using a notice of coverage change.~~

29 (ff) The Legislature finds that providing a program to  
30 repair property damaged by sinkholes safeguards the public's  
31 health, safety, and welfare and that it is in the public's  
32 interest for sinkhole loss claims to be resolved by stabilizing  
33 the land and structure and repairing the foundation of the  
34 damaged structure. The Legislature further finds that, in the  
35 past, many homeowners who obtained payouts from the corporation  
36 for a sinkhole claim did not use the funds to repair or  
37 remediate the claimed damage, thereby harming the real estate  
38 marketability of their homes and the valuation of other homes in  
39 the area. Therefore, the corporation shall establish a Citizens



300080

40 Sinkhole Stabilization Repair Program to promote the repair and  
41 remediation of sinkhole damage to homes. By March 31, 2015, any  
42 claim against a corporation policy that covers residential  
43 sinkhole loss for which it is determined that a covered sinkhole  
44 loss has occurred must be included in and governed by the repair  
45 program for the purpose of making stabilization repairs. The  
46 determination of whether a policyholder has a covered sinkhole  
47 loss will be made by the corporation or through neutral  
48 evaluation, judicial decree, or final judgment.

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

50 a. "Engineering report" means the report issued pursuant to  
51 s. 627.7073(1).

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

54 c. "Recommendation of the engineer" means the  
55 recommendation of the professional engineer engaged by the  
56 corporation and included in the report pursuant to s.  
57 627.7073(1)(a)5.

58 d. "Sinkhole loss" has the same meaning as provided in s.  
59 627.706(2).

60 e. "Stabilization repair" means stabilizing the land and  
61 structure caused by sinkhole activity and repairing the damaged  
62 structure.

63 f. "Stabilization repair contractor" means a contractor who  
64 makes stabilization repairs.

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

67 a. The policyholder may not be required to advance payment  
68 for stabilization repairs.



300080

69           b. Stabilization repairs must be conducted by a  
70 stabilization repair contractor selected from an approved  
71 stabilization repair contractor pool procured by the corporation  
72 pursuant to an open and transparent process. Each contractor  
73 within the pool must be qualified and approved by the  
74 corporation based on criteria that include the following  
75 requirements:

76           (I) The stabilization repair contractor corporate entity  
77 must demonstrate experience in the stabilization of sinkhole  
78 activity pursuant to requirements established by the  
79 corporation.

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

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

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

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

92           (VI) Such other requirements as may be established by the  
93 corporation.

94           c. Stabilization repair contractors selected from the  
95 approved stabilization repair contractor pool shall conduct  
96 stabilization repairs pursuant to a contract between the  
97 contractor and the corporation. Such contract is not subject to



300080

98 paragraph (e) or s. 287.057. Pursuant to the terms of the  
99 contract, the selected contractor is solely responsible for the  
100 performance of all necessary stabilization repairs specified in  
101 the engineering report and the recommendations of the engineer.

102 d. The corporation shall develop a standard stabilization  
103 repair contract for the purpose of conducting stabilization  
104 repairs on all properties within the repair program. At a  
105 minimum, the contract must require:

106 (I) The assigned stabilization repair contractor to  
107 complete all stabilization repairs identified in the engineering  
108 report based on line-item prices developed by the corporation  
109 which reasonably reflect actual market prices for sinkhole  
110 stabilization activities.

111 (II) Each stabilization repair contractor to post a payment  
112 bond in favor of the corporation as obligee for each project  
113 assigned and to post a performance bond, secured by a third-  
114 party surety, in favor of the corporation as obligee, in a  
115 principal amount equal to the total cost of all contracts  
116 annually awarded to that contractor.

117 (III) The stabilization repair contractor to provide a  
118 warranty to the policyholder which covers all repairs provided  
119 by the stabilization repair contractor for at least 5 years  
120 after completion of the stabilization repairs. The corporation  
121 shall also provide a warranty to the policyholder which covers  
122 all repairs provided by the stabilization repair contractor for  
123 at least 5 years if the stabilization repair contractor is  
124 unable to provide a remedy required under the warranty it  
125 provided to the policyholder.

126 (IV) That, throughout the course of the stabilization



300080

127 repairs performed by the contractor, the engineer monitor the  
128 property and confirm that stabilization has been satisfactorily  
129 completed and that no further stabilization is necessary to  
130 remedy the damage identified in the engineering report and the  
131 recommendations of the engineer.

132 (V) That the stabilization repair contractor notify the  
133 corporation if the engineer concludes that additional  
134 stabilization repairs are necessary to complete the repairs  
135 specified in the engineering report and the recommendations of  
136 the engineer. If repairs can be completed within policy limits,  
137 the stabilization repair contractor shall complete the  
138 additional repairs based on the line-item prices developed by  
139 the corporation. The contract must also contain provisions  
140 specifying the remedy and sanctions for failing to perform the  
141 additional repairs.

142 e. The corporation shall enter into contracts with  
143 qualified stabilization repair contractors to perform repairs  
144 pursuant to a process that requires all of the following  
145 components:

146 (I) Within 30 days after the completion of the engineering  
147 report, the report must be posted on a list that is made  
148 available to all stabilization repair contractors within the  
149 pool.

150 (II) The corporation shall select a stabilization repair  
151 contractor from the pool pursuant to a selection process  
152 established by the corporation for assigning a stabilization  
153 repair contractor to perform stabilization repairs for each  
154 property within the program. The selection process must include  
155 all of the following:



300080

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

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

164       (C) The policyholder has up to 30 days to select a  
165 stabilization repair contractor from the list. If the  
166 policyholder fails to make a selection within 30 days, the  
167 corporation shall make the selection. The corporation may  
168 reserve the right to select a stabilization repair contractor on  
169 the list based upon quality, cost-effectiveness, and such other  
170 criteria as the corporation determines appropriate.

171       (D) If no stabilization repair contractor submits an offer  
172 to perform the stabilization repairs for a property within the  
173 program or if all offers are above the policyholder's policy  
174 limit, the corporation may enter the property into the selection  
175 process again or may pay the policyholder an amount up to the  
176 policy limits on the structure. If the property is entered into  
177 the selection process three times and no stabilization repair  
178 contractor submits an offer to repair the property or all offers  
179 are above the policyholder's policy limit, the corporation shall  
180 elect to pay for stabilization repairs above the policyholder's  
181 policy limit or pay the policyholder an amount up to the policy  
182 limits on the structure.

183       3. The corporation is not responsible for serving as a  
184 stabilization repair contractor. The corporation's obligations



300080

185 under the repair program are not an election to repair by the  
186 corporation and therefore do not imply or create a new  
187 contractual relationship with the policyholder.

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

193 5. The corporation shall pay for other repairs to the  
194 structure and contents in accordance with the terms of the  
195 policy.

196 6. If the professional engineer engaged by the corporation  
197 determines that the stabilization repair cannot be completed  
198 within policy limits, the corporation must pay to complete the  
199 stabilization repair recommended by the corporation's  
200 professional engineer or tender the policy limits to the  
201 policyholder.

202 7. If a dispute arises between the corporation and the  
203 policyholder under this paragraph, under the policy, or under s.  
204 627.707 relating to the nature or extent of stabilization  
205 repairs to be conducted under the repair program, the sole  
206 remedy for resolving such dispute shall be to proceed with the  
207 necessary stabilization repairs through the repair program  
208 established under this paragraph, regardless of whether the  
209 claim, judgment, or decree is for breach of contract,  
210 declaratory relief, or specific performance.

211 8. If the corporation denies a policyholder's claim for  
212 sinkhole loss, the corporation or the policyholder may invoke  
213 neutral evaluation by filing a request with the department





300080

214 pursuant to s. 627.7074(7). Neutral evaluation is mandatory if  
215 requested by the corporation or the policyholder.

216 a. The neutral evaluator may not directly or indirectly  
217 participate in the remediation, repair, or restoration of the  
218 damaged property that is the subject of the claim, have a  
219 financial interest in the remediation, repair, or restoration of  
220 the damaged property that is the subject of the claim, or have a  
221 financial interest in any business entity that is involved in  
222 the remediation, repair, or restoration of the damaged property  
223 that is the subject of the claim.

224 b. The only issues to be determined by the neutral  
225 evaluator, pursuant to state law and the applicable policy, are  
226 whether there is sinkhole activity present as determined by a  
227 qualified professional geologist and, if so, whether there is  
228 sinkhole loss as determined by a qualified professional  
229 engineer. The neutral evaluator's conclusion is binding on the  
230 corporation and the policyholder. If the neutral evaluator  
231 determines that sinkhole loss exists, the sinkhole damage shall  
232 be included in and governed by the repair program.

233 c. Filing a request for neutral evaluation tolls the  
234 applicable time requirements for filing suit for 60 days  
235 following the conclusion of the neutral evaluation process or  
236 the time prescribed in s. 95.11, whichever is later.

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

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



300080

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

244 Section 3. By January 1, 2017, the Office of Program Policy  
245 Analysis and Government Accountability shall review the Citizens  
246 Sinkhole Stabilization Repair Program and submit a report to the  
247 Governor, the Chief Financial Officer, the President of the  
248 Senate, and the Speaker of the House of Representatives. The  
249 report must:

250 (1) Analyze policyholder satisfaction with stabilization  
251 repairs received through the program and the sufficiency of  
252 consumer protections provided by the program.

253 (2) Analyze the timeliness of stabilization repairs, in  
254 comparison with industry averages and practices. The report  
255 shall evaluate the loss costs associated with sinkhole claims  
256 under the program, comparing them with corporation's loss costs  
257 before the program's creation.

258 (3) Evaluate whether disputes between stabilization repair  
259 contractors and policyholders are resolved in an effective and  
260 timely manner.

261 (4) Evaluate whether litigation of sinkhole claims and  
262 associated costs are increasing or decreasing under the program,  
263 and the causes of such litigation.

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

266 Section 4. This act shall take effect July 1, 2014.

267  
268 ===== T I T L E A M E N D M E N T =====

269 And the title is amended as follows:

270 Delete everything before the enacting clause  
271 and insert:



300080

272                                   A bill to be entitled  
273           An act relating to sinkhole coverage; amending s.  
274           627.351, F.S.; requiring Citizens Property Insurance  
275           Corporation to submit a biannual report on the number  
276           of residential sinkhole policies requested, issued,  
277           and declined; providing legislative intent and  
278           establishing a Citizens Sinkhole Stabilization Repair  
279           Program for sinkhole claims; defining terms;  
280           prohibiting the corporation from requiring a  
281           policyholder to advance payment for stabilization  
282           repairs provided under the program; providing  
283           requirements and procedures for selecting  
284           stabilization repair contractors to conduct  
285           stabilization repairs; providing requirements and  
286           terms for contracts between the corporation and such  
287           contractors; specifying additional parameters with  
288           respect to the program, including provision for  
289           resolving disputes between the corporation and a  
290           policyholder; providing applicability; requiring the  
291           Office of Program Policy Analysis and Government  
292           Accountability to conduct a study of the program and  
293           submit a report to the Governor, the Chief Financial  
294           Officer, and the Legislature; providing an effective  
295           date.