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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/17

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Public Insurance Adjusters SB 88/SJCS

ANALYST Amacher

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
None	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Office of Attorney General (AGO)
Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of SJC Substitute

Senate Bill 88 as substituted by the Senate Judiciary Committee amends and adds new content to the Insurance Code (Chapter 59A NMSA 1978) defining “public adjuster” and other terms; proposing licensing, emergency use, standards of conduct, contract, record and regulatory requirements for insurance adjusters. This bill removes references to temporary licenses and prohibits adjusters who are contractors from adjusting claims. This bill establishes requirements for public adjusters to deposit funds received from insureds in escrow or trust accounts. Furthermore, the bill provides for continuing education requirements and allows the superintendent of insurance to review public adjuster’s reports of insurance fraud.

FISCAL IMPLICATIONS

No known fiscal implications.

SIGNIFICANT ISSUES

This bill modifies the Insurance Code by defining “public adjuster” and other terms; proposing

licensing, emergency use, standards of conduct, contract, record and regulatory requirements for insurance adjusters. This bill requires contractors who become licensed public adjusters to choose to either serve the insured as a public adjuster or as a contractor. This bill outlines the requirements for funds received from insured's settlements be deposited in escrow or trust accounts. Continuing education requirements may be met through e-mail or mail; and the superintendent of insurance may review a public adjuster's reports of insurance fraud.

Section 1 amends the definitions by adding "public adjuster", "home state" and other terms. A "public adjuster" is defined as one who acts on behalf of an insured or aides solely in relation to first-party claims arising under insurance contracts of loss or damage to real or personal property. "Home state" is defined as the District of Columbia and any state or territory of the United States in which the adjuster's principal place of residence or principal place of business is located; and provides the option for the adjuster to declare another home state in which it becomes licensed and acts as an adjuster.

Section 2 amends the examination for license (Section 59A-13-3.1 NMSA 1978) which becomes effective on July 1, 2017, by removing the qualifying term *resident* and the exclusion from examination for applicants for a temporary license.

Section 3 amends the qualifications for license as adjuster (Section 59A-13-4 NMSA 1978 which becomes effective on July 1, 2017) by removing the exception to temporary licenses.

Section 4 amends the bond requirements by removing the words "temporary or otherwise" when referring to a licensed adjuster.

Section 5 removes the language supporting temporary licenses and replaces it with the conditions an adjuster may be employed in New Mexico, in the event of an emergency. The amendment ensures the employed adjuster has fulfilled all licensing requirements and is in good standing in their homestate.

Section 6 amends the continuing education section for adjusters (Section 59A-13-12 NMSA 1978) by allowing study and instruction online or by mail regardless of remoteness of residence or inconvenience in attending formal instruction sessions.

Section 7 puts forward new material prohibiting conduct regarding the adjustment and repair of property damage. It specifically prohibits serving in the role as an adjuster by a contractor, roofer, plumber, or anyone otherwise providing building repairs or products for compensation. A contractor, or roofer, may not act nor advertise to adjust claims for any property for which services are or may be provided, regardless if the contractor is a licensed adjuster. A disclaimer must be issued on a form provided by the superintendent indicating which of these two capacities the adjuster is serving and affirm which capacity the adjuster is not serving.

Section 8 proposes new material outlining the standards of conduct for all adjusters.

Section 9 recommends new material for contract requirements between a public adjuster and an insured.

Section 10 presents new material requiring a public adjuster to deposit settlements funds into a non-interest-bearing escrow or trust account in a financial institution insured by an agency of the federal government in the public adjuster's home state or where the property loss occurred.

Section 11 outlines new material regarding the records of a public adjuster with a requirement that proprietary records be submitted to the superintendent. The Office of Superintendent of Insurance shall treat such records as confidential, not subject to the Inspection of Public Records Act, subpoena or subject to discovery or admissible as evidence in any private civil action.

Section 12 amends the superintendent's duties by adding the review of notices and reports by public adjusters for insurance fraud.

PERFORMANCE IMPLICATIONS

The AOC notes that the courts participate in performance-based budgeting and may be impacted on the measures of the district courts in the two areas: 1) cases disposed of as percent of cases filed; and, 2) percentage change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

The AOC commented that new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. And suggests there is a minimal administrative cost, although unidentified, for a statewide update, distribution and documentation of statutory changes.

OTHER SUBSTANTIVE ISSUES

This bill eliminates the issuance of temporary adjuster licenses and revises the requirements for insurance companies and public adjusters to use adjusters not licensed in New Mexico to handle claims on an emergency basis.

The AOC mentioned that the rule-making authority with respect to the superintendent's oversight of public adjusters is not specifically set out in the new material and may need to be added. The proposed legislation codifies the definition, duties and responsibilities of public adjusters in the state of New Mexico, as other states have already done. This bill gives the superintendent of insurance oversight responsibilities of public adjusters.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The insureds, homeowners, may continue to either independently manage the insurance claims working directly with the insurance agencies; or be provided assistance from contractors, or roofers, at the homeowner's request.

JMA/jle/al/jle