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FISCAL IMPACT REPORT

ORIGINAL DATE 02-24-09

SPONSOR Cervantes LAST UPDATED 03/14/09 HB 754/aHBIC

SHORT TITLE Insurance Contract Actual Property Value SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		None to State Agencies, but moderate to high to certain insurance consumers *			Recurring	

(Parenthesis () Indicate Expenditure Decreases)

(* refer to fiscal impact and other substantive issues)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of HBIC Amendment

House Business and Industry Committee (HBIC) amendment to House Bill 754 deletes references to “administrators” and “servicing carriers” from the bill. The amendment also changes the requirement to “provide” insurance coverage for the actual cash value of insured property, instead, the amendment specifies allows insurers to “also offer alternative” insurance coverage for the actual cash value of insured property.

Synopsis of Original Bill

House Bill 754 proposes to amend the Insurance Code. Section 1 of the bill amends 59A-18-17(C) NMSA 1978 to clarify that NM Property Insurance Program (NMPIP) policies are exempt from the requirement to provide replacement cost coverage for residential property.

Section 2 of the bill amends 59A-29-7 NMSA 1978 to extend the existing immunity of the NMPIP and its member insurers to include the member insurer acting as the NMPIP’s servicing carrier, and NMPIP’s administrators.

FISCAL IMPLICATIONS

None to the Public Regulation Commission (PRC). However, without the bill, the NMPIP would probably have to appropriately price insurance rates for NMPIP members (all insurance companies who write a certain type of coverage referred to as “essential property insurance”) which may result in increases to NMPIP consumers.

SIGNIFICANT ISSUES

According to the PRC, the bill addresses difficulties recently encountered by the NM Property Insurance Program (NMPIP), the underwriting association created to carry out the provisions of the FAIR Plan Act, Sections 59A-29-1 NMSA 1978, et seq. These difficulties arose as a result of a recent Supreme Court decision, the holding of which threatens the ability of the underwriting association to provide property insurance coverage to owners of property that might be otherwise uninsurable. See *Maes v. Audubon Indemnity Insurance Group*, 142 N.M. 235, 164 P.3d 934. As a result of that decision, questions have arisen with regard to the NMPIP’s ability to contract with a servicing carrier or carriers, and with regard to the applicability of the replacement cost requirements of Section 59A-18-17 NMSA 1978.

The *Maes* case, supra, held that the immunity provision of 59A-29-7 did not immunize the member insurer acting as the servicing carrier for the NMPIP. Therefore, that member insurer was exposed to bad faith litigation and damages for its activity on behalf of NMPIP. In so holding, the *Maes* court found that the relationship between the servicing carrier and the NMPIP was that of a direct insurer (the insurer issuing the policy in privity of contract with the insured owner) and a reinsurer (insurer of the direct insurer), respectively. In other words, the servicing carrier was the insurer who issued the policy, not the NMPIP. Because the servicing carrier is by definition an authorized insurer, it has been argued that the policy issued by that authorized insurer is subject to the replacement cost provisions of 59A-18-17.

Both of these court decisions could severely impact the functioning of the NMPIP to provide required insurance to properties that are otherwise uninsurable, or may significantly increase the cost of such insurance. The bill would alleviate these problems.

OTHER SUBSTANTIVE ISSUES

Since the 1960s, many states have established FAIR (“fair access to insurance requirements”) plans, which are “residual market” property insurance plans. The plans are designed to provide insurance to property owners who are not able to obtain coverage in the normal market because their risks would be unprofitable for an insurance company to voluntarily assume.

The New Mexico FAIR Plan was created by the Legislature in 1985, and its purpose is to provide essential property insurance to uninsurable property owners. Section 59A-29-2 NMSA 1978 authorizes all insurers who write essential property insurance in New Mexico to come together to form a FAIR Plan and to establish a not-for-profit underwriting association, which is known as the New Mexico Property Insurance Program (“NMPIP” or “the Plan”). All insurers who write essential property insurance in the state are required to be members of the Plan.

According to Section 59A-29-3 NMSA 1978, each member insurer shares in the Plan’s losses and expenditures in an amount proportionate to that member’s share of all essential property insurance policies written in the state.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMPIP might be required to significantly increase its underwriting activity in order to appropriately price the coverage, which may cause delays in issuing coverage, and can be expected to increase the price to the residential consumer.

DL/mc