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FISCAL IMPACT REPORT

ORIGINAL DATE 3/10/17

SPONSOR Stefanics LAST UPDATED _____ HB _____

SHORT TITLE Title Insurance Market Stabilization Act SB 477

ANALYST Martinez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Superintendent of Insurance

SUMMARY

Synopsis of Bill

SB477 creates the Title Insurance Market Stabilization Act, establishes a pool of title insurers to write title insurance at subsidized rates for owners and prospective buyers of properties that require access through Native American lands, and establishes the New Mexico Title Insurance Board.

FISCAL IMPLICATIONS

Section 3, creates a “Title Insurance Pool Board.” In subsection D., is states that members of the board may be reimbursed from the pool subject to the limitations provided by the Per Diem and Mileage Act and shall receive no other compensation, perquisite of allowance.

Section 17, states that the pool is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

The Office of Superintendent of Insurance (OSI) states that SB477 would allow title insurers to reduce their premium tax by 50% of the amount of their title pool assessments. SB477 also provides substantial discounts to premiums for policies issued by the pool to low-income

policyholders. OSI cannot estimate the amount of this loss in state revenue since the amount of policyholders that would be eligible for these pool policies is unknown and, of those pool policyholders, how many are in each of the four low-income categories contained in this bill.

SIGNIFICANT ISSUES

The Office of Superintendent of Insurance provided the following significant issues:

SB 477 would provide a means of allowing property owners to acquire title insurance in “high-risk” geographic areas in New Mexico affected by jurisdictional disputes between federally recognized Indian nations, tribes or pueblos and the state or its political subdivisions. SB 477 would provide a means of allowing property owners to acquire title insurance for selling, purchasing, refinancing and construction loans.

However, the very nature of such jurisdictional disputes necessarily invokes questions of federal law. SB 477 does not address the possibility that, even though high-risk title insurance could be issued, actual access to the affected property could still be denied sometime in the future by a federal mandate of the Secretary of Interior or the Bureau of Indian Affairs.

The underlying title issues do not appear to be resolvable without the intervention of the Secretary of Interior, after consultation with the federally recognized Indian nation, tribe or pueblo that may be involved in a jurisdictional dispute, either with the state or its political subdivisions, or with a property owner.

ADMINISTRATIVE IMPLICATIONS

SB 477 imposes duties on the Superintendent to chair the pool’s board of directors, approve the pool’s plan of operation, approve the pool’s rates and policy forms, and adopt rules regarding the pool.

TECHNICAL ISSUES

SB 477 is closely modeled on the Medical Insurance Pool Act. While the bill has altered some of that Act’s provisions to fit title insurance, OSI believes that there are various provisions that need some amendment to more accurately reflect title insurance. In addition, the pool’s fiscal year should coincide with the calendar year because that will keep reporting consistent with current reporting timelines. Both of these concerns are addressed specifically in the “Amendments” section below.

OTHER SUBSTANTIVE ISSUES

In order to obtain a mortgage on a property, title insurance is required. The assessments levied against title insurers by this pool will be passed on to future buyers of title insurance throughout the state through higher premiums.

ALTERNATIVES

A resolution of the issues that SB477 addresses would be corrected and eliminate the need for a pool if fixed at the Federal level.

OSI states that it is currently conducting an informal study to determine both the extent to which there are actual title insurance problems of the nature described in the bill and the extent to which the title industry may be able to provide voluntary assistance in resolving such problems. OSI has made a preliminary determination that title insurers' treatment of some geographic areas as "high-risk" has led to high title insurance premiums and perhaps even the inability to obtain title insurance at any cost. Please refer to NMSA 1978, Sections 59A-30-4, 59A-30-5.1, and 59A-30-6, as well as 13.14.9.18, 13.14.3.8.B, 13.14.8.28, 13.14.8.29, 13.14.10.49, 13.14.10.50, and 13.14.18.10.C NMAC. Further rulemaking and a voluntary joint underwriting agreement could provide some measure of relief.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Owners and potential buyers of properties that require access through Native American lands may continue to have difficulty obtaining title insurance at a reasonable cost.

AMENDMENTS

Proposed by the Office of the Superintendent of Insurance:

Page 2, between lines 7 and 8: Insert the definition “”high-risk zone” means a geographic area where a jurisdictional dispute exists between federally recognized Indian nations, tribes or pueblos and the state or its political subdivisions.” Use of this definition resolves a problem in Section 5 of the bill.

Page 2, line 8: Before “insurer” insert “title.” This modification should be used throughout the bill to clarify that the type of insurer involved is a title insurer.

Page 2, line 1: After “properties” insert “in high-risk zones”.

Page 2, lines 1 to 4: Delete “due to a jurisdictional dispute between federally recognized Indian nations, tribes or pueblos and the state or its political subdivisions”.

Page 2, lines 4 to 7: Replace “title insurance is either unavailable in the regular insurance market or available at a cost greater than four hundred percent of the cost of title insurance without easements” with “title insurance is available in the voluntary insurance market only at a rate greater than four hundred percent of the rate for title insurance without coverage for easements, if title insurance is available.” This avoids the illogical sentence “high risk title insurance means title insurance provided to properties in New Mexico where...title insurance is...unavailable...”

Page 6, line 18 to page 7, line 5: Replace Subsection A with “Commencing September 1, 2017, every insurer shall provide a notice and an application for coverage by the pool to any person who applies to the insurer for title insurance for a property in a high-risk zone and the insurer either offers coverage at a rate that exceeds the rate of a pool policy or else does not offer easement coverage.”

Page 7, lines 19 to 24: Delete “including the authority, with the approval of the superintendent of insurance, to enter into contracts with similar pools of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.” While relevant to a medical pool, this provision is not relevant to this

title insurance pool.

Page 8, lines 6 to 13: Replace with “develop actuarially sound rates for policies issued by the pool and submit those rates to the superintendent for his approval.”

Page 9, between lines 1 and 2: Insert a new subsection that reads “pay and establish reserves on claims on policies issued by the pool.”

Page 9, lines 12 to 15: Replace these two subsections with one subsection that reads “establish a plan to offer title insurance to individuals who are seeking to obtain title insurance in high-risk zones, including eligibility and coverage criteria as needed for program participants.” Place this new subsection as the first subsection of Section 6.

Page 9, lines 10 and 11: Delete.

Page 9, lines 16 to 19: Delete. These items don’t relate to title insurance.

Page 10, lines 8 to 13: Replace the first sentence with “Following the close of each calendar year, the pool administrator shall determine the total amount to assess title insurers, based on the pool’s premium revenue, investment income and other sources of revenue and the pool’s administrative expenses and claim costs.” The purpose of this sentence is to task the pool administrator with determining the overall annual amount of assessment, and what that amount should be based on. In addition, the pool’s fiscal year should coincide with the calendar year in order to make the allocation of the annual assessment among the various title insurers easier to do since insurers report their premium income primarily on a calendar year basis; this would also be consistent with current National Association of Insurance Commissioners (NAIC) standards.

Page 10, lines 15 and 16: Delete “and subscriber contract charges or their equivalent”. This pertains to medical insurance.

Page 10, line 18: After “all” insert “title insurance”.

Page 10, lines 18 and 19: Delete “and subscriber contract charges”.

Page 10, lines 22 and 23: Replace “actual losses and administrative expenses” with “the net fiscal losses”.

Page 10, line 24: Replace “offset future losses” with “reserve for claims that have been incurred, including those claims that have been incurred but have not yet been reported to the pool,”. This is clearer than “future losses”.

Page 10, line 25 to page 11, line 2: Delete the sentence “As used in this subsection, “future losses” includes reserves for incurred, but not reported, claims.”

Page 11, line 11: Delete “return”. The word is unnecessary.

Page 11, line 15: Replace “ability” with “solvency”. Delete “to fulfill its contractual obligation”. I think we’re expressing the same concern.

Page 11, line 22: Delete “for four years”. Why limit this liability to four years?

Page 12, lines 23 to 25: Delete the sentence “Billings shall be made on a periodic basis, not less than monthly, as determined by the board”. Unlike health insurance, title insurance policies do not expire but instead last indefinitely, hence periodic billing does not apply since title insurance premiums are to be paid in full up front.

Page 13, line 13: Replace “fiscal year” with “calendar year”.

Page 13, lines 14 and 15: Replace “net written and earned premiums, the expense of administration and the” with “the revenues and expenses of the pool for the year, including”.

Page 13, line 15: Replace “losses for the year” with “claim costs”.

Page 13, line 23: Delete “or renewal of coverage”. Title insurance policies don’t renew.

Page 14, lines 5 to 13: Delete this entire section. This section is not relevant to title insurance since title insurance policies don’t renew.

Page 14, line 15: Replace “shall” with “may”. Not all of the rules listed below may be required.

Page 15, line 6: Delete “STANDARD RISK RATE”. This term has no meaning in title insurance.

Page 15, lines 7 to 12: Delete the first two sentences. These are unnecessary since the Superintendent promulgates rates for title insurance in the voluntary market.

Page 15, line 14: Replace “cost of standard risk” with “rates promulgated for the voluntary market by the Superintendent for”.

JM/sb