

**LFC Requester:**

Julisa Rodriguez

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 1/23/2025

*Check all that apply:*

**Bill Number:** SB81

Original  Correction   
Amendment  Substitute

**Sponsor:** Sen Wirth  
Rep. Vincent  
Rep. Anita Gonzales

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Short Title:** NM PROPERTY  
INSURANCE PGM. ASSOC.  
BOARD

**Person Writing Analysis:** Blaine N. Moffatt  
**Phone:** 505-537-7676  
**Email:** legisfir@nmag.gov

### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Senate Bill 81 (“SB81”) as proposed amends the “FAIR Plan Act” (fair access to insurance requirements), NMSA 1978, Sections 59A-29-1 to 12. SB81 would create the New Mexico Property Insurance Program Board to administer the FAIR plan and establish a plan of operation. SB81 would provide that the board consist of nine members appointed by the superintendent of insurance, the governor, and members of the senate and the house, and that the superintendent shall serve as the chair of the board. SB81 proposes additional requirements for a FAIR plan to insure those unable to obtain insurance on the regular market and adds enforcement provisions the superintendent may impose against member insurers who are out of compliance with the FAIR Plan Act. Finally, SB81 would appropriate \$50,000,000 from the general fund to administer the FAIR Plan Act and fire mitigation programs and declares an emergency.

Section 1 provides definitions of terms relevant to the act.

Section 2 creates the board and describes its membership and duties. More specifically, Section 2 creates that board consisting of nine (9) appointed members of varying backgrounds. Subsection B details the appointed member terms. Subsection C allows the board members a term limit of three terms. Subsection D allows for the original appointee to appoint new members in case of vacancy. Subsection E allows board members to receive per diem under the Per Diem and Mileage Act. Subsection F of Section 2 would require the New Mexico Attorney General to provide legal representation to the board as necessary.

Section 3 amends NMSA 1978, Section 59A-29-2 by changing wording to reflect that the superintendent directs the FAIR plan. The superintendent directs insurers to establish an underwriting association.

Section 4 amends NMSA 1978, Section 59A-29-4 to remove “cumulative weighted voting for the governing committee of the association” from the things that the plan and articles of association must provide for.

Section 5 provides requirements for the FAIR plan to provide property and commercial property insurance to those who are unable to obtain insurance in the regular market.

Section 6 provides details of the plan of operation, including lines of insurance coverages, coverage limits, policy forms, perils to be covered, establishment of underwriting standards, time frames, and administration of the plan. It includes provisions for the effective date, amendments

to the plan of operation, and for the enactment of rules if the board fails to submit a plan of operation by July 1, 2026.

Section 7 amends NMSA 1978, Section 59A-29-5 to allow the board to amend the FAIR plan on its own initiative, rather than the governing committee of the New Mexico property insurance program.

Section 8 gives the superintendent authority to enforce the provisions of the act. The superintendent may suspend or revoke a certificate of authority to transact insurance business, or the superintendent may impose a fine on any member insurer that fails to timely pay an assessment or to comply with the plan of operation. Subsection A of Section 8 indicates that a notice of hearing and hearing must be conducted in order for the superintendent to suspend or revoke a certification.

Section 9 prohibits the board and the New Mexico property insurance program from selling a policy subject to the FAIR plan directly to a person.

Section 10 provides for assessment of fees. Such fees may be collected from member insurers. Member insurers would be allowed to recoup such fees from policyholders up to over a three year period. Member insurers may not increase premiums based on a fee assessed. The superintendent shall direct the board to collect fees if the program becomes insolvent. The board, based on its own opinion may defer a fee should a member insurer be in danger of solvency.

Section 11 sets forth reporting requirements for the board. The board would be required to submit a report to the superintendent yearly on or before April 1, 2027, and each subsequent year.

Section 12 appropriates \$50,000,000 from the general fund to the office of the superintendent of insurance to administer the FAIR Plan Act and fire mitigation programs.

Section 13 repeals Section 59A-29-9, NMSA 1978, which provides that the FAIR Plan Act applies retroactively to April 30, 1981.

Section 14 declares an emergency and that this act should take effect immediately.

## **FISCAL IMPLICATIONS**

The Department of Justice will have fiscal implications from additional resources needed to fulfill obligations under the proposed legislation.

## **SIGNIFICANT ISSUES**

As proposed SB81 would create a new public body, namely the “The New Mexico Property Insurance Program Association Board. (the “Board”). Section 2 creates substantial duties for the Board but does not provide any authority to promulgate rules. This could be problematic as the Board is tasked with significant oversight of a large appropriation, scheduling and collecting fees, and taking disciplinary and administrative action against member insurers in New Mexico. Such items would be required by NMSA 1978, 14-4-1 to -11 (the “State Rules Act”) to be in rule.

SB81 Section 8 proposes language that allows the superintendent to hold enforcement power and to suspend or revoke a certificate of authority to transact insurance business. Section 8 only

mentions that a notice of hearing and a hearing shall be held prior to a suspension or revocation. There is no process outlined in SB81 that would indicate what a notice of hearing shall entail and no language to detail what type of hearing is necessary for this determination. Granting the Board rulemaking authority would relieve these concerns, but SB81 as currently proposed presents concerns related to due process rights under the United States Constitution and New Mexico Constitution. Should due process violations occur, the state could be liable under the NMSA 1978, 41-4A-1 to -13, the New Mexico Civil Rights Act.

SB81 proposes language that “the attorney general shall provide legal representation to the board as necessary.” Such language is broad and vague of what legal representation is required. NMSA 1978, Section 8-5-2 already outlines the duties of the New Mexico Attorney General, including representation in litigation and other legal matters. This is an expansion of responsibilities as contemplated in NMSA 1978, Section 8-5-2(K).

### **PERFORMANCE IMPLICATIONS**

As drafted, SB81 section 2(F) states: “(t)he attorney general shall provide legal representation to the board as necessary.” As noted above, this language adds to the responsibilities in NMSA 1978, Section 8-5-2, expanding the agency’s workload without accounting for the resources needed to perform the work.

### **ADMINISTRATIVE IMPLICATIONS**

N/A

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

### **TECHNICAL ISSUES**

“Superintendent of insurance” has been stricken in Sections 3 & 7, but it is still in Section 12. The definition of “superintendent” may be unclear. Consider defining.

### **OTHER SUBSTANTIVE ISSUES**

N/A

### **ALTERNATIVES**

N/A

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

### **AMENDMENTS**

N/A