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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/07

SPONSOR Stewart LAST UPDATED _____ HB 254

SHORT TITLE Reasonable Care in Title Searches SB _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 595

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Office of the Attorney General (AG)

Energy, Minerals, and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 254 amends Section 59A-30-11 of the insurance code to place liability on title insurers for errors and mistakes in title search and examinations.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

This bill would allow a policyholder who has received reimbursement for a claim under his title policy to pursue additional reimbursement by submitting a lawsuit against his title insurer for failing to perform an accurate title search.

AGO notes that, under the current law, a title insurance company authorized to do business in New Mexico is immune from liability for the negligent performance of its statutorily mandated duties. An insurer's liability presently is limited to the amount established by the title insurance policy (generally, the price paid for the land). A title insurer does not have exposure for traditional tort damages (broader than policy/contract damages) as a result of the exculpatory language in the present version of § 59A-30-11(A), added in at 1999 amendment.

HB 254 proposes to strike the language added in 1999 and place liability solely on title insurers for errors and mistakes in performing title searches and examinations. EMNRD finds that this proposal should make clear that title insurers have an obligation to exercise reasonable care in performing title searches and examinations and to remove any ambiguity in the law the 1999 amendment may have introduced regarding whether title insurers may be sued.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 254 duplicates Senate Bill 595.

TECHNICAL ISSUES

AGO finds the word "solely" on page 2, line 7, to be ambiguous and confusing, and perhaps unnecessary. Does the word mean that only the company will be liable for an agent's error and the agent (personally) will be immune, or does it mean that there will be no other liability?

OTHER SUBSTANTIVE ISSUES

AGO provides the following example to illustrate the proposal under HB 254. A house insured in 1980 for \$150,000 is being sold. The owner discovers the title insurer failed to find a problem with the title that has rendered the house virtually unmarketable. Since 1980, the house has appreciated by \$100,000. Under present law the owner's damages are limited to the \$150,000 for which the policy was written in 1980. However, under the proposed amendment, the title insurer has exposure for not only the original purchase price of \$150,000, but also for the lost appreciation value of \$100,000 that the owner would have realized had the sale closed, as well as any other type of tort damage that the owner can prove.

According to EMNRD, their State Parks Division (SPD) acquires real property in connection with administering state parks throughout New Mexico. As part of its real property acquisitions, SPD requires title insurance to protect against adverse claims to the real property it acquires and to identify and eliminate title defects. SPD must rely on the strength of title insurance policies it holds (as the insured) and must be able to pursue claims against title insurance companies for any failure of the title that may arise subsequent to the issuance of the policy. The same holds true for any person, business entity, or other state agency or local public body that acquires title insurance.