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FISCAL IMPACT REPORT

ORIGINAL DATE 02/14/11
LAST UPDATED 02/26/11 **HB** _____

SPONSOR SCORC

SHORT TITLE Surplus Lines Insurance Multistate Compact **SB** 250/SCORCS

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	NFI	NFI		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Corporations & Transportation Committee Substitute to Senate Bill 250 would enter New Mexico into a multistate compact for the regulation and taxation of surplus lines insurance for businesses that operate in multiple states. The bill brings New Mexico into compliance with the Nonadmitted and Reinsurance Reform Act (NRRRA) of the federal Dodd/Frank Bill, which goes into effect July 21, 2011.

The bill also amends various sections of the Insurance Code to conform to new federal laws regarding the surplus lines insurance – also referred more broadly as nonadmitted insurers.

The bill also provides the authority to collect insurance premiums according to the formula identified in the compact and transmit that portion which belongs to other states to the other states.

FISCAL IMPLICATIONS

Surplus Lines Insurance Multistate Compliance Compact (SLIMPACT-Lite) addresses the surplus lines reform provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The provisions were originally part of the Nonadmitted and Reinsurance Reform Act

(NRRA). Starting in July, the Dodd-Frank provisions prohibit any state that is not the home state of an insured from requiring any premium tax payment for nonadmitted insurance. The NRRA, among other things, authorizes states to enter into a compact to allocate premium taxes.

The Insurance Division of the PRC collects about \$2.5 million annually in premium taxes on insurance written by surplus lines insurers. Much or most of that \$2.5 million derives from surplus lines policies for businesses that have operations in New Mexico but are headquartered elsewhere. If New Mexico does not enter into a multistate compact (SLIMPACT-Lite) by July 21, 2011, the state will lose the ability to collect much or most of our current \$2.5 million in surplus lines premium tax revenues.

SIGNIFICANT ISSUES

Surplus lines brokers and insurers provide property/casualty insurance primarily to businesses that cannot find insurance in the normal insurance markets. Many or most of the businesses that buy surplus lines insurance operate in multiple states. Generally, a surplus line insurer is not licensed by the PRC (they are, however, regulated in the state or country where they are domiciled or located). Since they are not strictly regulated by New Mexico, these insurers are generally free from the rate regulations imposed on licensed insurers. This gives them the freedom to maintain broader internal guidelines for accepting risks. They have more flexibility to design and price their policies and can, therefore, accept risks that licensed insurers will not.

This bill responds to the federal Dodd-Frank Wall Street Reform and Consumer Protection Act provisions by enacting the SLIMPACT-Lite provisions to establish allocation formulas, uniform payment methods and reporting requirements, eligibility standards, and a single policyholder notice to replace the various forms used across the country.

There is currently a maze of state laws and rules that govern the regulation and taxation of surplus lines insurance. The Dodd-Frank Act attempts to reduce these complexities by requiring states to enter into multistate compacts.

Two competing model laws have been produced: one by the National Council of Insurance Legislators (“NCOIL”) and one by the National Association of Insurance Commissioners (“NAIC”). This bill enacts the NCOIL model, referred to as the SLIMPACT-Lite model, which is supported by the insurance industry. The NAIC model, which has not yet been finalized, is opposed by the insurance industry due to its perceived shortcomings in addressing the reforms required by the federal Nonadmitted and Reinsurance Reform Act.

The bill will streamline surplus line insurance taxation and ensure that each state receives its fair share of tax revenue. SLIMPACT-Lite would require a state to create a single tax rate for surplus lines insurance, allow states to charge their own rates, and set uniform payment dates, among other things.

OTHER SUBSTANTIVE ISSUES

According to the National Conference of State Legislatures (NCSL):

Surplus or excess lines insurance is insurance coverage that is not available from insurers licensed in the state, called admitted companies, and must be purchased from a non-admitted

carrier. A consumer may need to purchase surplus lines insurance if the consumer needs more unique insurance than what is available from admitted insurers for property and casualty coverages such as commercial general liability insurance, fire insurance, mobile home policies, automobile physical damage coverage, and medical malpractice insurance.

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law by President Obama on July 21, 2010. Incorporated into the law is language addressing excess and surplus lines insurance, the Nonadmitted and Reinsurance Reform Act (NRRA). The NRRA, by its various provisions will preempt or supersede portions of the excess and surplus lines law as they exist today in the states. Of particular significance to states, on July 21, 2011, when most of the provisions of the NRRA take effect, only the Home State of the insured will be authorized to tax a surplus lines transaction, and the states will not be able to allocate the tax revenue unless the states adopt an interstate compact or other uniform, national tax allocation procedures. This leaves little time for states to amend their excess and surplus lines insurance statutes to conform to the mandatory provisions and definitions contained in the NRRA. The failure of the states to modernize this important area of insurance regulation may result in the loss of valuable premium dollars and add momentum to proponents of a greater federal role in the regulation of insurance industry.

Accordingly, an interstate compact (SLIMPACT-Lite) was drafted with input from state insurance regulators, state legislators, industry trade organizations and others. SLIMPACT-Lite will streamline regulatory requirements by providing for: uniform premium tax allocation formulae; a clearinghouse to facilitate the correct calculation and reporting of premium taxes due to the compacting states; and improved coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices. SLIMPACT-Lite is endorsed by the National Conference of State Legislatures (NCSL), the National Conference of Insurance Legislators (NCOIL) and the Council of State Governments (CSG).

To date, 18 states have introduced legislation to comply with the NRRA: Arizona, Connecticut, Hawaii, Indiana, Kentucky, Maryland, Mississippi, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Virginia, West Virginia and Wyoming.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

After July 21, 2011 we will lose the legal right to collect much or most of our current \$2.5 million in surplus lines premium tax revenues.

ATTACHMENT

National Conference of State Legislatures (NCSL) letter to Legislative leaders.

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National Conference of State Legislatures
Council of State Governments
National Conference of Insurance Legislators

January 7, 2011

Dear Colleague:

The National Conference of Insurance Legislators (NCOIL), The Council of State Governments (CSG), and the National Conference of State Legislatures (NCSL), urges you to consider time of the essence in enacting a Surplus Lines Insurance Multi-State Compliance Compact (known as [SLIMPACT-Lite](#)). This new interstate compact will ensure that we as states continue to collect our fair share of surplus lines insurance premium tax revenue in 2011 and beyond.

As well as enjoying NCOIL, CSG, and NCSL endorsement, SLIMPACT-Lite is supported by the surplus/excess lines insurance industries and key property-casualty and insurance producer associations. Widespread support for the compact should vastly outweigh any isolated opposition in your state.

Unlike other existing proposals, SLIMPACT-Lite has been developed and vetted over the course of several years and is fully responsive to Dodd-Frank Act provisions. It would authorize a governing commission to establish allocation formulas, uniform payment methods and reporting requirements, insurer eligibility standards, and a single policyholder notice to replace the various forms used across the country. To streamline taxation and ensure that each state receives its fair share under SLIMPACT, each state would create a single tax rate for surplus lines insurance, charge their own rates on multi-state risks, and choose among uniform payment dates.

The states need to act quickly and uniformly as the Dodd-Frank Act's Nonadmitted and Reinsurance Reform Act (NRRA), which becomes effective in July 2011, prohibits any state that is not the home state of an insured from requiring premium tax payment for nonadmitted insurance. The NRRA declares the intent of Congress that each state "adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact..." to allocate premium taxes on multi-state risks.

NRRA provisions would also supersede your state's eligibility/solvency requirements—reverting to a few minimal protections—unless new standards are developed in conjunction with an interstate compact. SLIMPACT-Lite, as cited above, would provide such a mechanism to develop nationwide uniform foreign insurer eligibility standards that would ensure that stable, well-financed companies are providing coverage in our states.

Making matters more pressing is the evolving federal threat of preemption. The new Federal Insurance Office (FIO)—in its study on how to modernize and improve insurance oversight—may use any failure by the states to implement reform to push for a greater federal role in the historically state-regulated industry. With this new insurance presence in Washington, state modernization efforts will be more closely scrutinized than ever before.

As leaders of the major national organizations comprising state lawmakers, we believe that SLIMPACT-Lite is the most effective solution to implement Dodd-Frank and streamline surplus lines taxation and regulation. We hope that you will consider joining your colleagues from across the country in pushing compact legislation in your 2011 session.

Please feel free to contact staff at any of our respective organizations for assistance.

Sincerely,

Sen. Delores Kelley, MD
Chair, NCSL CFI Committee

Rep. Bob Godfrey, CT
Chair, CSG

Rep. George Keiser, ND
President, NCOIL

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