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SENATE BILL 477

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Elizabeth "Liz" Stefanics

AN ACT

RELATING TO INSURANCE; ENACTING THE TITLE INSURANCE MARKET
STABILIZATION ACT; CREATING A POOL FOR HIGH-RISK TITLE
INSURANCE FOR PROPERTIES AFFECTED BY INTERGOVERNMENTAL
JURISDICTION DISPUTES; ESTABLISHING THE NEW MEXICO TITLE
INSURANCE BOARD; PROVIDING FOR RULEMAKING; PROVIDING
DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Title Insurance Market Stabilization Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Title Insurance Market Stabilization Act:

A. "board" means the board of directors of the
pool;

B. "high-risk title insurance" means title

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1 insurance provided to properties in New Mexico where, due to a
2 jurisdictional dispute between federally recognized Indian
3 nations, tribes or pueblos and the state or its political
4 subdivisions, title insurance is either unavailable in the
5 regular insurance market or available at a cost greater than
6 four hundred percent of the cost of title insurance without
7 coverage for easements;

8 C. "insurer" means an insurance company authorized
9 to transact title insurance business in this state;

10 D. "pool" means the New Mexico title insurance
11 pool;

12 E. "program participant" means a person who
13 purchases title insurance through the pool; and

14 F. "title insurance" means "title insurance", as
15 defined in the New Mexico Title Insurance Law.

16 SECTION 3. [NEW MATERIAL] TITLE INSURANCE POOL CREATED--
17 BOARD.--

18 A. There is created a nonprofit entity to be known
19 as the "New Mexico title insurance pool". An administrator for
20 the pool shall be selected pursuant Section 11 of the Title
21 Insurance Market Stabilization Act who shall be supervised by
22 the board of directors created in Subsection C of this section.
23 All insurers shall organize and remain members of the pool as a
24 condition of their authority to transact insurance business in
25 this state.

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1 B. The superintendent of insurance shall, within
2 sixty days after the effective date of the Title Insurance
3 Market Stabilization Act, give notice to all insurers of the
4 time and place for the initial organizational meeting of the
5 pool. Each member of the pool shall be entitled to one vote in
6 person or by proxy at the organizational meeting.

7 C. A board of directors is created to set policy
8 and supervise the administration of the pool. The board shall
9 consist of the superintendent of insurance or the
10 superintendent's designee, who shall serve as the chair of the
11 board; two members appointed by the members of the pool; and
12 four members appointed by the superintendent of insurance. The
13 members appointed by the superintendent of insurance shall
14 consist of four residents of New Mexico who are not
15 professionally affiliated with an insurer, at least one of whom
16 shall be an individual who is insured by the pool.

17 D. The members of the board appointed by the
18 members of the pool shall be appointed for initial terms of
19 four years or less, staggered so that the term of one member
20 shall expire on June 30 of every other year. The members of
21 the board appointed by the superintendent shall be appointed
22 for initial terms of four years or less, staggered so that the
23 term of one member expires on June 30 of each year. Following
24 the initial terms, members of the board shall be appointed for
25 terms of four years. If the members of the pool fail to make

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1 the initial appointments required by this subsection within
2 sixty days following the first organizational meeting, the
3 superintendent of insurance shall make those appointments.
4 Whenever a vacancy on the board occurs, the superintendent of
5 insurance shall fill the vacancy by appointing a person to
6 serve the balance of the unexpired term. The person appointed
7 shall meet the requirements for initial appointment to that
8 position. Members of the board may be reimbursed from the pool
9 subject to the limitations provided by the Per Diem and Mileage
10 Act and shall receive no other compensation, perquisite or
11 allowance.

12 E. The board shall submit a plan of operation to
13 the superintendent of insurance and any amendments to it
14 necessary or suitable to ensure the fair, reasonable and
15 equitable administration of the pool.

16 F. The superintendent of insurance shall, after
17 notice and hearing, approve the plan of operation; provided
18 that it is determined to ensure the fair, reasonable and
19 equitable administration of the pool and provides for the
20 sharing of pool losses on an equitable, proportionate basis
21 among the members of the pool. The plan of operation shall
22 become effective upon approval in writing by the superintendent
23 of insurance consistent with the date on which coverage under
24 the Title Insurance Market Stabilization Act is made available.
25 If the board fails to submit a plan of operation within one

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1 hundred eighty days after the appointment of the board, or any
2 time thereafter fails to submit necessary amendments to the
3 plan of operation, the superintendent shall, after notice and
4 hearing, adopt and promulgate such rules as are necessary or
5 advisable to effectuate the provisions of the Title Insurance
6 Market Stabilization Act. Rules promulgated by the
7 superintendent of insurance shall continue in force until
8 modified by the superintendent of insurance or superseded by a
9 subsequent plan of operation submitted by the board and
10 approved by the superintendent of insurance.

11 SECTION 4. [NEW MATERIAL] PLAN OF OPERATION.--The plan of
12 operation submitted by the board to the superintendent of
13 insurance shall:

- 14 A. establish procedures for the handling and
15 accounting of assets and money of the pool;
- 16 B. establish regular times and places for meetings
17 of the board;
- 18 C. establish procedures for records to be kept of
19 all financial transactions and for annual fiscal reporting to
20 the superintendent of insurance;
- 21 D. contain additional provisions necessary and
22 proper for the execution of the powers and duties of the pool;
- 23 E. establish procedures for the collection of
24 assessments from all members of the pool to provide for claims
25 paid under the plan and for administrative expenses incurred or

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1 estimated to be incurred during the period for which the
2 assessment is made;

3 F. establish the amount of assessment pursuant to
4 Section 10 of the Title Insurance Market Stabilization Act that
5 shall be imposed annually at the end of each calendar year and
6 that shall be due and payable within thirty days of the receipt
7 of the assessment notice;

8 G. establish procedures for the selection of a pool
9 administrator in accordance with Section 11 of the Title
10 Insurance Market Stabilization Act;

11 H. develop and implement a program to publicize the
12 existence of the plan, the eligibility requirements and
13 procedures for enrollment in the plan and to maintain public
14 awareness of the plan; and

15 I. establish penalties for non-collection of
16 assessments from pool members.

17 SECTION 5. [NEW MATERIAL] NOTICE OF POOL.--

18 A. Commencing September 1, 2017, every insurer
19 shall provide a notice and an application for coverage by the
20 pool to any person who receives:

21 (1) a rejection of coverage of title
22 insurance;

23 (2) a notice that the rate for title insurance
24 will exceed the rates of a pool policy; or

25 (3) a notice of reduction or limitation of

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1 coverage, including a restrictive rider, from an insurer if the
2 effect of the reduction or limitation is to substantially
3 reduce coverage compared to the coverage available for property
4 considered a standard risk for the type of coverage provided by
5 the plan.

6 B. The notice required by Subsection A of this
7 section shall state that, effective January 1, 2018 or an
8 earlier date, that person is eligible to apply for title
9 insurance provided by the pool. Application for the title
10 insurance shall be on forms prescribed by the board and made
11 available to all insurers.

12 SECTION 6. [NEW MATERIAL] BOARD POWERS AND DUTIES.--The
13 board shall have the general powers and authority granted under
14 the laws of this state to insurance companies licensed to
15 transact title insurance business. In addition, the board
16 shall have the specific authority to:

17 A. enter into contracts as are necessary or proper
18 to carry out the provisions and purposes of the Title Insurance
19 Market Stabilization Act, including the authority, with the
20 approval of the superintendent of insurance, to enter into
21 contracts with similar pools of other states for the joint
22 performance of common administrative functions or with persons
23 or other organizations for the performance of administrative
24 functions. The pool shall comply with the Procurement Code,
25 except as otherwise provided in the Title Insurance Market

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1 Stabilization Act;

2 B. sue or be sued, including taking any legal
3 action as necessary to avoid the payment of improper claims
4 against the pool or the coverage provided by or through the
5 pool;

6 C. establish appropriate rates, rate schedules,
7 rate adjustments, expense allowances, agent referral fees,
8 claim reserve formulas and any other actuarial functions
9 appropriate to the operation of the pool. Rates and rate
10 schedules may be adjusted for appropriate risk factors such as
11 age and area variation in claim costs and shall take into
12 consideration appropriate risk factors in accordance with
13 established actuarial underwriting practices;

14 D. assess members of the pool in accordance with
15 the provisions of the Title Insurance Market Stabilization Act
16 and make initial and interim assessments as may be reasonable
17 and necessary for the organizational or interim operating
18 expenses of the pool. Interim assessments shall be credited as
19 offsets against any regular assessments due following the close
20 of the calendar year. Interim assessments may include
21 anticipated expenses of the next year that the board determines
22 are reasonable and necessary for the operating expenses of the
23 pool;

24 E. issue policies of insurance in accordance with
25 the requirements of the Title Insurance Market Stabilization

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1 Act;

2 F. appoint appropriate legal, actuarial and other
3 committees as necessary to provide technical assistance in the
4 operation of the pool, policy and other contract design and any
5 other function within the authority of the pool; and

6 G. conduct periodic audits to ensure the general
7 accuracy of the financial data submitted to the pool. The
8 board shall cause the pool to have an annual audit of its
9 operations by an independent certified public accountant.

10 SECTION 7. [NEW MATERIAL] EXPANSION OF PROGRAMS.--The
11 board may:

12 A. establish a plan to offer individuals with
13 eligible property the ability to purchase title insurance;

14 B. establish eligibility and coverage criteria as
15 needed for program participants;

16 C. establish the cost-sharing amounts payable by a
17 program participant; and

18 D. participate with and receive funding from any
19 federal agency designated to administer expanded coverage
20 programs for state high-risk title insurance pools.

21 SECTION 8. [NEW MATERIAL] EXAMINATION.--The pool shall be
22 subject to and responsible for examination by the
23 superintendent of insurance. Not later than March 1 of each
24 year, the board shall submit to the superintendent of insurance
25 an audited financial report for the preceding calendar year in

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1 a form approved by the superintendent.

2 SECTION 9. [NEW MATERIAL] POLICY FORMS.--All policy forms
3 issued by the pool shall conform in substance to prototype
4 forms developed by the pool and shall be filed with and
5 approved by the superintendent of insurance before they are
6 issued.

7 SECTION 10. [NEW MATERIAL] ASSESSMENTS.--

8 A. Following the close of each fiscal year, the
9 pool administrator shall determine the net premium, being
10 premiums less administrative expense allowances, the pool
11 expenses and claim expense losses for the year, taking into
12 account investment income and other appropriate gains and
13 losses. The assessment for each insurer shall be determined by
14 multiplying the total cost of pool operation by a fraction, the
15 numerator of which equals that insurer's premium and subscriber
16 contract charges or their equivalent for title insurance
17 written in the state during the preceding calendar year and the
18 denominator of which equals the total of all premiums and
19 subscriber contract charges written in the state. The board
20 may adopt other or additional methods of adjusting the formula
21 to achieve equity of assessments among pool members.

22 B. If assessments exceed actual losses and
23 administrative expenses of the pool, the excess shall be held
24 at interest and used by the board to offset future losses or to
25 reduce pool premiums. As used in this subsection, "future

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1 losses" includes reserves for incurred, but not reported,
2 claims.

3 C. The proportion of participation of each member
4 in the pool shall be determined annually by the board based on
5 annual statements and other reports deemed necessary by the
6 board and filed with it by the member. Any deficit incurred by
7 the pool shall be recouped by assessments apportioned among the
8 members of the pool pursuant to the assessment formula provided
9 by Subsection A of this section; provided that the assessment
10 for any pool member shall be allowed as a fifty percent credit
11 on the premium tax return for that member.

12 D. The board may abate or defer, in whole or in
13 part, the assessment of a member of the pool if, in the opinion
14 of the board, payment of the assessment would endanger the
15 ability of the member to fulfill its contractual obligation.
16 In the event an assessment against a member of the pool is
17 abated or deferred in whole or in part, the amount by which
18 such assessment is abated or deferred may be assessed against
19 the other members in a manner consistent with the basis for
20 assessments set forth in Subsection A of this section. The
21 member receiving the abatement or deferment shall remain liable
22 to the pool for the deficiency for four years.

23 SECTION 11. [NEW MATERIAL] POOL ADMINISTRATOR--
24 SELECTION--DUTIES.--

25 A. The board shall select a pool administrator

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1 through a competitive bidding process. The board shall
2 evaluate bids based on criteria established by the board that
3 shall include:

- 4 (1) proven ability to handle title insurance;
- 5 (2) efficiency of claim-paying procedures;
- 6 (3) an estimate of total charges for
7 administering the plan; and
- 8 (4) ability to administer the pool in a
9 cost-efficient manner.

10 B. The pool administrator shall serve for a period
11 of three years subject to removal for cause. At least one year
12 prior to the expiration of each three-year period of service by
13 the pool administrator, the board shall invite all interested
14 parties, including the current administrator, to submit bids to
15 serve as the pool administrator for the succeeding three-year
16 period. Selection of the administrator for a succeeding period
17 shall be made at least six months prior to the expiration of a
18 three-year period of service by a pool administrator.

- 19 C. The pool administrator shall:
- 20 (1) perform all eligibility and administrative
21 claim payment functions relating to the pool;
 - 22 (2) establish a premium billing procedure for
23 collection of premiums from insured persons. Billings shall be
24 made on a periodic basis, not less than monthly, as determined
25 by the board;

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1 (3) perform all necessary functions to ensure
2 timely payment of benefits to persons covered under the pool,
3 including:

4 (a) making information available
5 relating to the proper manner of submitting a claim for
6 benefits to the pool and distributing forms upon which
7 submission shall be made; and

8 (b) evaluating the eligibility of each
9 claim for payment by the pool;

10 (4) submit regular reports to the board
11 regarding the operation of the pool. The frequency, content
12 and form of the report shall be as determined by the board; and

13 (5) following the close of each fiscal year,
14 determine net written and earned premiums, the expense of
15 administration and the paid and incurred losses for the year
16 and report this information to the board and the superintendent
17 of insurance on a form prescribed by the superintendent.

18 D. The administrator shall be paid as provided in
19 the contract negotiated pursuant to the process for selection
20 of the pool administrator established by the board.

21 SECTION 12. [NEW MATERIAL] ELIGIBILITY.--

22 A. Property is eligible for a pool policy if on the
23 effective date of coverage or renewal of coverage the only
24 insurance available on the open market is high-risk title
25 insurance.

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1 B. An individual is not eligible for coverage by
2 the pool if the individual has voluntarily terminated coverage
3 by the pool within the past twelve months and did not have
4 other continuous coverage during that time.

5 **SECTION 13. [NEW MATERIAL] POOL POLICY.--**

6 A. A pool policy offered under the Title Insurance
7 Market Stabilization Act shall contain provisions under which
8 the pool is obligated to renew the contract until the day on
9 which the property for which the contract is issued first
10 becomes eligible for non-high-risk title insurance.

11 B. The pool shall not change the rates for pool
12 policies except on a class basis with a clear disclosure in the
13 policy of the right of the pool to do so.

14 **SECTION 14. [NEW MATERIAL] RULES.--**The superintendent of
15 insurance shall:

16 A. adopt rules that provide for disclosure by
17 members of the pool of the availability of insurance coverage
18 from the pool;

19 B. adopt rules that implement the provisions of the
20 Title Insurance Market Stabilization Act; and

21 C. adopt any other rules deemed necessary in order
22 to carry out the provisions of the Title Insurance Market
23 Stabilization Act.

24 **SECTION 15. [NEW MATERIAL] COLLECTIVE ACTION.--**Neither
25 the participation by insurers in the pool, the establishment of

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1 rates, forms or procedures for coverages issued by the pool nor
2 any other joint or collective action required by the Title
3 Insurance Market Stabilization Act shall be the basis of any
4 legal action, civil or criminal liability or penalty against
5 the members of the pool either jointly or separately.

6 SECTION 16. [NEW MATERIAL] RATES STANDARD RISK RATE.--

7 A. The pool shall determine a standard risk rate by
8 actuarially calculating the individual rate that an insurer
9 would charge for an individual policy with the pool benefits
10 issued for a property that is a standard risk. Separate
11 schedules of standard risk rates established by rule of the
12 superintendent of insurance may be used. The rates charged for
13 pool coverage shall be no more than two hundred percent of the
14 cost of standard risk title insurance without coverage for
15 easements.

16 B. The board shall adopt a low-income premium
17 schedule that provides coverage at lower rates for those
18 property owners with an income less than four hundred percent
19 of the current federal poverty level guidelines applicable to
20 New Mexico, published by the United States department of health
21 and human services. For property owners with household incomes
22 of one hundred ninety-nine percent of the federal poverty level
23 or lower, the premium reduction shall be seventy-five percent.
24 For property owners with household incomes of two hundred
25 percent to two hundred ninety-nine percent of the federal

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1 poverty level, the premium reduction shall be fifty percent.
2 For property owners with household incomes of three hundred
3 percent to three hundred ninety-nine percent of the federal
4 poverty level, the premium reduction shall be twenty-five
5 percent. No property owner shall be eligible for a low-income
6 premium reduction if the premium is paid by a third party who
7 is not a family member.

8 C. All rates and rate schedules shall be submitted
9 to the superintendent of insurance for approval.

10 SECTION 17. [NEW MATERIAL] EXEMPTION.--The pool is exempt
11 from payment of all fees and all taxes levied by this state or
12 any of its political subdivisions.

13 SECTION 18. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2017.