

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 477

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

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 A 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  
insurance provided to properties in high-risk zones in New

1 Mexico where, if title insurance is available in the voluntary  
2 insurance market, it is only available at a rate greater than  
3 four hundred percent of the rate for title insurance without  
4 coverage for easements;

5 C. "high-risk zone" means a geographic area where a  
6 jurisdictional dispute exists between federally recognized  
7 Indian nations, tribes or pueblos and the state or its  
8 political subdivisions;

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

11 E. "pool" means the New Mexico title insurance  
12 pool;

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

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

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

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

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1 business in this state.

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

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

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

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

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

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

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

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

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

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1 paid under the plan and for administrative expenses incurred or  
2 estimated to be incurred during the period for which the  
3 assessment is made;

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

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

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

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

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

19 A. Commencing September 1, 2017, every title  
20 insurer shall provide a notice and an application for coverage  
21 by the pool to any person who applies to the insurer for title  
22 insurance for a property in a high-risk zone and the insurer  
23 either offers coverage at a rate that exceeds the pool policy  
24 or else does not offer easement coverage.

25 B. The notice required by Subsection A of this

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1 section shall state that, effective January 1, 2018 or an  
2 earlier date, that person is eligible to apply for title  
3 insurance provided by the pool. Application for the title  
4 insurance shall be on forms prescribed by the board and made  
5 available to all title insurers.

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

11 A. establish a plan to offer title insurance to  
12 individuals who are seeking to obtain title insurance in high-  
13 risk zones, including eligibility and coverage criteria as  
14 needed for program participants;

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

25 C. sue or be sued, including taking any legal

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1 action as necessary to avoid the payment of improper claims  
2 against the pool or the coverage provided by or through the  
3 pool;

4 D. develop actuarially sound rates for policies  
5 issued by the pool and submit those rates for the  
6 superintendent of insurance's approval;

7 E. assess members of the pool in accordance with  
8 the provisions of the Title Insurance Market Stabilization Act  
9 and make initial and interim assessments as may be reasonable  
10 and necessary for the organizational or interim operating  
11 expenses of the pool. Interim assessments shall be credited as  
12 offsets against any regular assessments due following the close  
13 of the calendar year. Interim assessments may include  
14 anticipated expenses of the next year that the board determines  
15 are reasonable and necessary for the operating expenses of the  
16 pool;

17 F. issue policies of insurance in accordance with  
18 the requirements of the Title Insurance Market Stabilization  
19 Act;

20 G. pay and establish reserves on claims on policies  
21 issued by the pool;

22 H. appoint appropriate legal, actuarial and other  
23 committees as necessary to provide technical assistance in the  
24 operation of the pool, policy and other contract design and any  
25 other function within the authority of the pool; and

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1 I. conduct periodic audits to ensure the general  
2 accuracy of the financial data submitted to the pool. The  
3 board shall cause the pool to have an annual audit of its  
4 operations by an independent certified public accountant.

5 SECTION 7. [NEW MATERIAL] PARTICIPATION IN FEDERAL  
6 PROGRAM.--The board may participate in any federal program and  
7 receive funding from any federal agency designated to  
8 administer coverage programs for state high-risk title  
9 insurance pools.

10 SECTION 8. [NEW MATERIAL] EXAMINATION.--The pool shall be  
11 subject to and responsible for examination by the  
12 superintendent of insurance. Not later than March 1 of each  
13 year, the board shall submit to the superintendent of insurance  
14 an audited financial report for the preceding calendar year in  
15 a form approved by the superintendent of insurance.

16 SECTION 9. [NEW MATERIAL] POLICY FORMS.--All policy forms  
17 issued by the pool shall conform in substance to prototype  
18 forms developed by the pool and shall be filed with and  
19 approved by the superintendent of insurance before they are  
20 issued.

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

22 A. Following the close of each calendar year, the  
23 pool administrator shall determine the total amount to assess  
24 title insurers, based on the pool's premium revenue, investment  
25 income and other sources of revenue and the pool's

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1 administrative expenses and claim costs. The assessment for  
2 each title insurer shall be determined by multiplying the total  
3 cost of pool operation by a fraction, the numerator of which  
4 equals that insurer's premium for title insurance written in  
5 the state during the preceding calendar year and the  
6 denominator of which equals the total of all title insurance  
7 premiums written in the state. The board may adopt other or  
8 additional methods of adjusting the formula to achieve equity  
9 of assessments among pool members.

10 B. If assessments exceed the net fiscal losses of  
11 the pool, the excess shall be held at interest and used by the  
12 board to reserve for claims that have been incurred, including  
13 those claims that have been incurred but have not yet been  
14 reported to the pool, or to reduce pool premiums.

15 C. The proportion of participation of each member  
16 in the pool shall be determined annually by the board based on  
17 annual statements and other reports deemed necessary by the  
18 board and filed with it by the member. Any deficit incurred by  
19 the pool shall be recouped by assessments apportioned among the  
20 members of the pool pursuant to the assessment formula provided  
21 by Subsection A of this section; provided that the assessment  
22 for any pool member shall be allowed as a fifty percent credit  
23 on the premium tax for that member.

24 D. The board may abate or defer, in whole or in  
25 part, the assessment of a member of the pool if, in the opinion

1 of the board, payment of the assessment would endanger the  
2 solvency of the member. In the event an assessment against a  
3 member of the pool is abated or deferred in whole or in part,  
4 the amount by which such assessment is abated or deferred may  
5 be assessed against the other members in a manner consistent  
6 with the basis for assessments set forth in Subsection A of  
7 this section. The member receiving the abatement or deferment  
8 shall remain liable to the pool for the deficiency.

9 SECTION 11. [NEW MATERIAL] POOL ADMINISTRATOR--  
10 SELECTION--DUTIES.--

11 A. The board shall select a pool administrator  
12 through a competitive bidding process. The board shall  
13 evaluate bids based on criteria established by the board that  
14 shall include:

- 15 (1) proven ability to handle title insurance;  
16 (2) efficiency of claim-paying procedures;  
17 (3) an estimate of total charges for  
18 administering the plan; and  
19 (4) ability to administer the pool in a cost-  
20 efficient manner.

21 B. The pool administrator shall serve for a period  
22 of three years subject to removal for cause. At least one year  
23 prior to the expiration of each three-year period of service by  
24 the pool administrator, the board shall invite all interested  
25 parties, including the current administrator, to submit bids to

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1 serve as the pool administrator for the succeeding three-year  
2 period. Selection of the administrator for a succeeding period  
3 shall be made at least six months prior to the expiration of a  
4 three-year period of service by a pool administrator.

5 C. The pool administrator shall:

6 (1) perform all eligibility and administrative  
7 claim payment functions relating to the pool;

8 (2) establish a premium billing procedure for  
9 collection of premiums from insured persons;

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

13 (a) making information available  
14 relating to the proper manner of submitting a claim for  
15 benefits to the pool and distributing forms upon which  
16 submission shall be made; and

17 (b) evaluating the eligibility of each  
18 claim for payment by the pool;

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

22 (5) following the close of each calendar year,  
23 determine the revenues and expenses of the pool for the year,  
24 including paid and incurred claim costs, and report this  
25 information to the board and the superintendent of insurance on

1 a form prescribed by the superintendent of insurance.

2 D. The pool administrator shall be paid as provided  
3 in the contract negotiated pursuant to the process for  
4 selection of the pool administrator established by the board.

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

6 A. Property is eligible for a pool policy if on the  
7 effective date of coverage the only title insurance available  
8 on the open market is high-risk title insurance.

9 B. An individual is not eligible for coverage by  
10 the pool if the individual has voluntarily terminated coverage  
11 by the pool within the past twelve months and did not have  
12 other continuous coverage during that time.

13 SECTION 13. [NEW MATERIAL] RULES.--The superintendent of  
14 insurance may:

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

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

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

23 SECTION 14. [NEW MATERIAL] COLLECTIVE ACTION.--Neither  
24 the participation by title insurers in the pool, the  
25 establishment of rates, forms or procedures for coverages

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

6 SECTION 15. [NEW MATERIAL] RATES.--

7 A. The rates charged for pool coverage shall be no  
8 more than two hundred percent of the rates promulgated for the  
9 voluntary market by the superintendent of insurance for title  
10 insurance without coverage for easements.

11 B. All rates and rate schedules shall be submitted  
12 to the superintendent of insurance for approval.

13 SECTION 16. [NEW MATERIAL] EXEMPTION.--The pool is exempt  
14 from payment of all fees and all taxes levied by this state or  
15 any of its political subdivisions.

16 SECTION 17. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2017.