

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** HJC **ORIGINAL DATE** 01/30/13 **CS/45/aHFI#1/aSJC/**  
**LAST UPDATED** 03/15/13 **HB** aSFI#1  
**SHORT TITLE** Transfer Insurance Regulation from PRC **SB** \_\_\_\_\_  
**ANALYST** Clark

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>PRC</b>		(\$1,399.2)	(\$1,399.2)	(\$2,798.4)	Recurring	Insurance Funds
<b>Office of Superintendent of Insurance</b>		\$1,399.2	\$1,399.2	\$2,798.4	Recurring	Insurance Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)  
 Department of Information Technology (DoIT)  
 Administrative Office of the Courts (AOC)

#### Other Responses

Think New Mexico

### SUMMARY

#### Synopsis of SFI Amendment #1

The Senate Floor #1 amendment eliminates the allowance for the possible removal of the superintendent of insurance to be initiated by a complaint from the governor.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the House Judiciary Committee substitute for House Bill 45 adds a requirement for the elected chair of the insurance nominating committee that the person elected must not have, nor have a spouse or child who has, any direct financial interest in an insurer, insurance agency, or insurance transaction except as a policyholder or a claimant under a policy or as an owner of less than 1 percent of the shares of an insurer that is a publicly traded corporation.

The chart at the top of the document now shows the fiscal impact this bill will have in conjunction with House Bill 2. House Bill 2 as passed by the Senate contains contingency language such that if this bill or similar legislation is enacted during the fifty-first Legislature the Public Regulation Commission must transfer all insurance funds to the Office of Superintendent of Insurance.

Synopsis of HFI #1 Amendment

The House Floor #1 amendment to the House Judiciary Committee substitute for House Bill 45 strikes Section 28 in its entirety and replaces it with a version of Section 28 that mirrors exactly the existing Section 59A-23C-10 NMSA 1978 of the Insurance Code with the one exception that it eliminates a reference to the Public Regulation Commission (PRC) and replaces it with a reference to the Office of Superintendent of Insurance. This fixes a technical error in the House Judiciary Committee substitute for HB 45, which contained incorrect material in Section 28 that did not properly mirror Section 59A-23C-10 NMSA 1978.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 45 (HB 45) makes 11 substantive changes to current law.

First, the bill establishes the Office of Superintendent of Insurance as a standalone agency.

Second, the bill establishes a nine-member insurance nominating committee to appoint the superintendent of insurance. The committee will consist of:

- a) four members appointed by the Legislative Council -- no more than two from the same political party -- two from the insurance industry and two representing insurance consumers;
- b) four members appointed by the governor -- no more than two from the same political party -- two from the insurance industry and two representing insurance consumers; and
- c) a ninth member selected by the other eight, who shall be either a former New Mexico Superintendent of Insurance or another person with extensive knowledge of insurance regulation in New Mexico.

Third, the bill establishes that the superintendent shall serve four-year terms without term limits, except that the initial term beginning July 1, 2013 shall end on December 31, 2015. The superintendent shall report annually to the Legislature, the insurance nominating committee, and the governor.

Fourth, the bill establishes that the Legislature will set the compensation of the superintendent in an appropriations act. The salary must not be below that of the lowest paid cabinet secretary and not higher than that of the highest paid cabinet secretary.

Fifth, the bill prohibits the superintendent and the superintendent's spouse and children from having financial conflicts of interest.

Sixth, the bill allows the superintendent to be removed only for cause (incompetence, willful neglect of duty, or malfeasance in office). If there is cause to remove a superintendent, the insurance nominating committee would have the power to do so, upon recommendation by the governor.

Seventh, the bill transfers authority to hear appeals from any person aggrieved by the superintendent's order or refusal to hold a hearing from the PRC to the court of appeals. The decision of the superintendent shall be set aside only if it is shown that the decision (1) is arbitrary, capricious, or reflects an abuse of discretion; (2) is not supported by substantial evidence; or (3) is otherwise not in accordance with law.

Eighth, the bill transfers all personnel, property, functions, contracts, agreements, and other obligations from the Insurance Division of the PRC to the new Office of Superintendent of Insurance.

Ninth, the bill cleans up provisions throughout the New Mexico statutes that give the PRC authority over insurance regulation by replacing the terms "public regulation commission" and "commission" with "superintendent of insurance."

Tenth, the bill requires the superintendent to comply with the provisions of the Administrative Procedures Act.

Finally, the bill includes an emergency clause because the constitutional amendment requires the new superintendent, selected by the nominating committee, take office July 1, 2013.

## **FISCAL IMPLICATIONS**

The Insurance Division currently shares physical space and administrative services with the PRC. As a standalone agency, the Office of Superintendent of Insurance may need, at least initially, to enter into a memorandum of understanding with the PRC regarding the continuance of such services. However, to truly be a standalone agency separate from the PRC, the Office of Superintendent of Insurance would at some point require additional funding and authorized FTE to hire its own administrative personnel.

The PRC intends to transfer 5 FTE and the associated funding of \$333.8 thousand to the Office of Superintendent of Insurance. However, the PRC and the Insurance Division have not yet agreed on the number of additional, new FTE required for the Office of Superintendent of Insurance and the funding necessary to support those FTE. The table at the top of this analysis shows ranges for estimated additional operating budget impact based on LFC data, with the bottom of the range for the Insurance Division representing 5 new FTE and the top of the range representing 7 new FTE as well as a range for increased administrative costs from \$0 to \$100 thousand. The ranges shown assume the administrative costs could possibly be transferred from the PRC or might require an additional appropriation if the PRC cannot absorb the loss of some or all of this transfer. All fiscal impacts directly affect the insurance operations fund, but any balance in the fund at the end of a fiscal year greater than one-half of that fiscal year's appropriation revert to the general fund.

The Office of Superintendent of Insurance will need a nonrecurring appropriation in order to set up the infrastructure of the new agency's information technology network and server room to

become a standalone agency. House Bill 2 contains a nonrecurring IT appropriation for the PRC, of which \$500 thousand will be used for the following costs associated with the setup of networks, servers, and other hardware.

- \$75 thousand for servers
- \$100 thousand for a firewall
- \$50 thousand for switches
- \$50 thousand for cabling
- \$25 thousand for LAN connections
- \$100 thousand for a data center
- \$100 thousand for air conditioning for server room HVAC

### **SIGNIFICANT ISSUES**

This bill implements the requirements of a New Mexico constitutional amendment approved by voters in 2012 to remove insurance regulation from the PRC and create the Office of Superintendent of Insurance effective July 1, 2013. The constitutional amendment also requires that the superintendent of insurance be chosen by an insurance nominating committee but leaves all implementation details to be determined by the Legislature.

### **ALTERNATIVES**

Rather than being a standalone agency, the Office of Superintendent of Insurance could be housed within an existing department such as the Regulation and Licensing Department.

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

On July 1, 2013, the effective date of the constitutional amendment, the Insurance Division will become independent of the PRC but without a defined legal status as an agency.

JC/blm:svb