

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

PROPOSED AMENDMENT DIRECTED TO A COMMITTEE

March 16, 2025

Madam Chair:

I propose to the HOUSE JUDICIARY COMMITTEE the following amendments to

SENATE BILL 81, as amended

1. Strike Senate Tax, Business and Transportation Committee Amendment 1.

2. Strike Senate Finance Committee Amendments 3 and 4.

3. Strike all items of Senate Floor Amendment number 1.

4. On page 1, lines 11 and 12, strike "PROPERTY INSURANCE PROGRAM ASSOCIATION" and insert in lieu thereof "FAIR PLAN".

5. On page 1, strike lines 19 through 25 and strike pages 2 through 12 and insert in lieu thereof:

"SECTION 1. A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] NEW MEXICO FAIR PLAN BOARD.--

A. The "New Mexico FAIR plan board" is created and consists of the following eleven members:

(1) the following four members, each appointed by one of the four insurers with the largest proportion of direct written property insurance premiums out of all admitted insurers:

(a) two members representing admitted mutual insurers; and

(b) two members representing admitted stock insurers;

(2) two members appointed by a New Mexico insurance agent trade organization;

(3) one member appointed by the minority floor leader of the senate;

(4) one member appointed by the minority floor leader of the house of representatives;

(5) one member appointed by the president pro tempore of the senate;

(6) one member appointed by the speaker of the house of representatives; and

(7) the superintendent of insurance or the superintendent's designee.

B. Each appointed member of the board shall be a resident of New Mexico.

C. The board shall elect a chair from among its members.

D. Members appointed pursuant to Paragraphs (3) through (6) of Subsection A of this section shall have knowledge and experience in at least one of the following areas:

(1) actuarial expertise;

(2) catastrophic risk experience;

(3) finance or statutory accounting expertise;

(4) insurance claims management and adjustment experience; or

(5) loss mitigation standards expertise.

E. The term of office for appointed board members is three years; provided that:

(1) each appointed member serves at the pleasure of the authority who appointed the member;

(2) members initially appointed pursuant to Subparagraphs (a) and (b) of Paragraph (1) of Subsection A of this section shall serve an initial term of one year; and

(3) members initially appointed pursuant to Paragraph (2) of Subsection A of this section shall serve an initial term of two years.

F. If a vacancy occurs on the board, the original appointing authority shall appoint a new board member to complete the remainder of the board member's term."

**SECTION 2.** Section 59A-29-2 NMSA 1978 (being Laws 1985, Chapter 61, Section 2) is amended to read:

"59A-29-2. ORGANIZATION OF FAIR PLAN AND UNDERWRITING ASSOCIATION.--All insurers licensed to write and writing essential property insurance, as defined by the superintendent [~~of insurance~~], in New Mexico on a direct basis [~~are authorized, subject to approval and regulation by the superintendent of insurance to~~] shall establish and maintain a FAIR plan, [~~and to~~] establish and maintain an underwriting association and [~~to~~] formulate and from time to time amend the plan and articles of association and rules and regulations in connection therewith and to assess and share on a fair and equitable basis all expenses, income and losses incident to such FAIR plan and underwriting association in a manner consistent with the provisions of the FAIR Plan Act. Such underwriting association shall be known as the "New Mexico property insurance program".

**SECTION 3.** Section 59A-29-4 NMSA 1978 (being Laws 1985, Chapter 61, Section 4) is amended to read:

"59A-29-4. REQUIREMENTS OF PLAN AND AUTHORITY OF ASSOCIATION.--The FAIR plan and articles of association shall make

provision for an underwriting association having authority on behalf of its members to cause to be issued property insurance policies and the authority to reinsure in whole or in part any such policies and to cede any such reinsurance. The plan and articles of association shall provide, among other things, for the perils to be covered, geographical area of coverage, compensation and commission, assessments of members, [the] sharing of expenses, income and losses on an equitable basis, [~~cumulative weighted voting for the governing committee of the association, the~~] administration of the plan and association and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements."

**SECTION 4.** A new section of the FAIR Plan Act, Section 59A-29-4.1 NMSA 1978, is enacted to read:

"59A-29-4.1. [NEW MATERIAL] FAIR PLAN REQUIREMENTS.--The premium rates for the insurance offered by the New Mexico property insurance program shall:

- A. not be excessive, inadequate or unfairly discriminatory;
- B. be actuarially sound so that revenue generated from premiums is adequate to pay for expected losses, expenses and taxes;
- C. reflect the investment income of the plan; and
- D. reflect the cost of reinsurance or other capital risk transfer markets."

**SECTION 5.** A new section of the FAIR Plan Act, Section 59A-29-4.2 NMSA 1978, is enacted to read:

"59A-29-4.2. [NEW MATERIAL] PLAN OF OPERATION.--

A. The New Mexico FAIR plan board shall establish and submit to the superintendent a plan of operation for the FAIR plan and the New Mexico property insurance program that provides for:

- (1) the lines of insurance coverages to be written;
- (2) coverage limits not to exceed seven hundred fifty

thousand dollars (\$750,000) for dwellings and one million dollars (\$1,000,000) for each commercial property and a maximum policy limit of five million dollars (\$5,000,000) for commercial property; provided that beginning in fiscal year 2027 and each fiscal year thereafter, the New Mexico FAIR plan board may adjust the coverage limits;

(3) the policy forms to be used;

(4) the perils to be covered;

(5) the establishment of reasonable underwriting standards to determine the eligibility of a risk, including mitigation requirements and property inspections;

(6) the compensation and commissions to be paid to insurance producers by the New Mexico property insurance program plan;

(7) the time frames for assessments to be collected from insurers that are members of the FAIR plan; and

(8) any other matter necessary for the purpose of assuring fair access to the New Mexico property insurance program.

B. The plan of operation and any amendments to the plan of operation shall become effective upon written approval by the superintendent."

**SECTION 6.** Section 59A-29-5 NMSA 1978 (being Laws 1985, Chapter 61, Section 5) is amended to read:

"59A-29-5. CHANGES IN PLAN OR ARTICLES.--The [~~governing committee of the New Mexico property insurance program~~] New Mexico FAIR plan board may, on its own initiative or at the request of the superintendent of insurance, amend the plan and articles, subject to approval by the superintendent."

**SECTION 7.** A new section of the FAIR Plan Act, Section 59A-29-6.1 NMSA 1978, is enacted to read:

"59A-29-6.1. [NEW MATERIAL] ENFORCEMENT.--

A. After notice and hearing, the superintendent may suspend or revoke the certificate of authority to transact insurance business in this state of a FAIR plan member insurer that fails to timely pay an assessment or to comply with the plan of operation.

B. As an alternative to suspension or revocation of a certificate of authority, the superintendent may impose a fine on any FAIR plan member insurer that fails to timely pay an assessment or to comply with the plan of operation in an amount that is the greater of:

(1) the amount of the assessment plus interest; or

(2) five thousand dollars (\$5,000)."

**SECTION 8.** A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] ASSESSMENTS.--

A. The New Mexico FAIR plan board may collect assessments from insurers that are members of the FAIR plan as needed for the New Mexico property insurance program to remain solvent, subject to approval by the superintendent.

B. An insurer assessed pursuant to this section may recoup the assessment directly from the insurer's policyholders as a surcharge on the policyholders. New Mexico property insurance program policyholders shall also be subject to the surcharge. The surcharge may be recouped over a two-year period.

C. An insurer shall not increase premiums based on an assessment made pursuant to this section."

**SECTION 9.** A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] ISSUANCE AND SALE OF FAIR PLAN POLICIES.--A FAIR plan policy may only be issued through the New Mexico property insurance program and sold through authorized producers. To be eligible for coverage under a policy provided by the New Mexico property insurance program, an application for coverage shall

include evidence of at least three declinations of coverage for the property that the applicant is seeking to cover."

**SECTION 10.** A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] REPORTING REQUIREMENTS.--

A. On or before April 1, 2027, and each year thereafter, the New Mexico FAIR plan board shall submit a report to the superintendent, in a form and manner prescribed by the superintendent, that provides information on the:

- (1) financial condition of the FAIR plan;
- (2) number of policies and the coverage available through the New Mexico property insurance program; and
- (3) number and types of claims made under the New Mexico property insurance program.

B. In addition to the annual reporting requirement, the superintendent may require the New Mexico FAIR plan board to submit quarterly reports if the superintendent determines that quarterly reporting is necessary to ensure the continued solvency of the FAIR plan."

**SECTION 11. REPEAL.--**Section 59A-29-9 NMSA 1978 (being Laws 1985, Chapter 61, Section 9) is repealed.

**SECTION 12. EFFECTIVE DATE.--**The effective date of the provisions of Section 1 of this act is July 1, 2026.

**SECTION 13. EMERGENCY.--**It is necessary for the public peace, health and safety that this act take effect immediately."

Respectfully submitted,

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Harlan Vincent