

SESSION OF 2007

SUPPLEMENTAL NOTE ON SENATE BILL NO. 127

As Amended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 127, as amended, would enact new law, the Kansas Subsidence Insurance Act, to allow for mine subsidence coverage under homeowner's and basic property insurance in Kansas. Specifically, the bill would create the Kansas Mine Subsidence Insurance Underwriting Association, an association of insurers authorized to write basic property insurance. The bill also would create an oversight board, the Mine Subsidence Insurance Governing Board, and a fund for claims payments, the Mine Subsidence Insurance Fund.

**Kansas Mine Subsidence Insurance
Underwriting Association**

All insurers authorized to write, on a direct basis, basic property insurance or any such component in multi-peril policies would be required to participate as a member of the Underwriting Association. The Underwriting Association, under the approved plan of operation, would be permitted to assume and cede reinsurance on insurable risks written by its members. The Underwriting Association is to be attached to the Kansas Insurance Department for purposes of budgeting, purchasing and other management functions. Any meeting of the Underwriting Association would be subject to the Kansas Open Meetings Act and the Kansas Open Records Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Mine Subsidence Insurance Governing Board

The Board would be created for the purpose of governing the Underwriting Association and would consist of: the Insurance Commissioner or designee, as chairperson; State Treasurer or designee; the Secretary of Health and Environment or designee; and one representative of the member insurance companies. The Board would be responsible for approving all actions of the Underwriting Association. The Board also would be authorized to enter into contracts for administrative and claims adjusting services.

Mine Subsidence Insurance Fund

The bill also would create the Mine Subsidence Insurance Fund to be administered by the governing board for the purpose of making coverage available to any structure within this state. The moneys in the Fund would be derived from premiums for the purpose of paying any liabilities incurred by a claim against any subsidence insurance policy. Premiums are to be established by the plan of operation and the Board would be responsible for the periodic review of the premium level and experience data. The Board, with the approval of the Insurance Commissioner, would make changes to premium levels as necessary. The State Treasurer would serve as the custodian of the Fund; the Fund would not be a part of the State Treasury. The bill makes provisions for Fund requisitions and maintaining sufficient funds. The Insurance Commissioner is to audit the affairs of the Fund at least once per year in order to ascertain its financial condition and ability to fulfill its obligations.

The Board is to submit a proposed plan of operation for the economical, fair, and nondiscriminatory administration of the Fund to the Insurance Commissioner for approval. The Board would be required to submit a revised plan, within 15 days, if the Commissioner disapproves the plan. If the revised plan is not sufficient, the Commissioner is to promulgate a plan of operation. The Board would submit plan amendments to the Commissioner for approval. The plan and its amendments are to be adopted in accordance with the Kansas Open Meetings Act.

Coverage Provisions

Insurance companies that offer basic property and homeowners insurance, by insuring structures on a direct basis, will be required to offer mine subsidence insurance coverage (provided by the Kansas Mine Subsidence Insurance Underwriting Association) in each policy delivered, issued for delivery or renewed in the state. Any deductible, in accordance with the approved coverage form, is to be no less than \$250 or more than \$500, with the total value reinsured by the Underwriting Association not exceeding \$300,000. Insurance companies are not precluded from selling insurance coverage in excess of \$300,000. Before any coverage can be issued, an inspection must be performed. The inspection is to document the integrity of the insured structures to identify any existing damage to be excluded from coverage.

Additionally, all companies authorized to write basic property insurance are to enter into a reinsurance agreement with the Underwriting Association in which the companies agree to cede 100 percent (up to \$300,000) of any subsidence insurance underwritten by the Association and as a consideration of the ceding commission, agree to undertake payment of taxes and all other expenses necessary for the sale of policies. Separately, the Underwriting Association is required to agree to provide a claims adjusting staff and to pay from the Mine Subsidence Insurance Fund all valid policyholder claims resulting from subsidence. Thirty percent of all premiums collected by insurers (excluding those not reinsured by the Underwriting Association) would be retained by the insurer as the ceding commission. Each member is to periodically report the amounts of premiums collected to the Insurance Commissioner.

The bill also includes a liability provision which indicates that the act would not create any liability on the part of the State of Kansas beyond those amounts paid into the Fund and earned by the Fund. No liability would be created on the part of the Underwriting Association, its members, or the contractors or vendors employed by the Board. Except in the case of fraud by the company, the Underwriting Association would have no right of recourse against the company.

Background

SB 127 was introduced by the Senate Committee on Ways and Means. State Representative Doug Gatewood spoke in support of the bill indicating that Kansas has mines throughout the state, especially in the areas of Johnson, Reno, Crawford, and Cherokee counties yet no insurance policy is available to deal with incidents such as those that recently occurred in Galena, Kansas, when there are no possible responsible parties. This legislation, the Representative indicated, was introduced to provide an optional insurance program after several financial institutions expressed concern about renewing or issuing loans on land without some assurance on the structures. The Kansas Department of Health and Environment supported the bill, with its representative noting that the companies responsible for the underground mining should be responsible for the damage but as the mining took place many decades ago, the responsible companies often are not available. The insurance program, the representative indicated, would be beneficial to several areas of the state where underground mining has taken place. There were no opponents to the bill at the time of the Committee hearing.

The Senate Committee on Financial Institutions and Insurance made amendments to the bill: defined the term, "business building insurance" and made clarifying amendments using the term; expanded the definition of "mine subsidence" to include gypsum mines in the listing of underground mines; designated the Insurance Commissioner as the Chairperson of the governing board; broadened contract authority, including the use of the term "vendor"; and required an inspection before any coverage could be issued to document any existing damage to be excluded from coverage. The "business building insurance" amendments were proposed by Representative Gatewood. The remaining amendments were proposed by the Kansas Department of Health and Environment.

The fiscal note prepared by the Division of the Budget on the original bill indicates that passage of the bill would change the state from an insurance regulator to a reinsurance producer. The Kansas Insurance Department states it would need to hire a consultant to determine how best to implement the bill. The Department indicates it would need to hire an actuary to set the price of the reinsurance and an administrative staff person to track the reports and premium payments which would come from hundreds of insurance companies. The estimate for hiring a 1.0 FTE administrative position, as well as contracting with an actuary, would be approximately \$100,000 from the

agency fee funds in FY 2008. The Department estimated ongoing expenses would be approximately \$50,000 per year.

The Kansas Department of Health and Environment estimated costs of \$41,743 SGF for FY 2008 and \$31,000 to \$32,000 each year in on going expenses, including those associated with providing service as the chairperson representative for the Mine Subsidence Insurance Governing Board. Amendments to the bill remove the designation of chairperson from KDHE to the Insurance Department. The fiscal note does not separate expenditures associated with the role of chairperson. The State Treasurer states that an existing staff member would be responsible for handling the Mine Subsidence Insurance Fund and making payments out of the Fund. In addition, the Treasurer's Office would work with the Insurance Department on any audit of the Fund. The agency indicates that the additional responsibilities could be handled within existing resources. Any fiscal effect resulting from the passage of the bill would be in addition to amounts included in *The FY 2008 Governor's Budget Report*.