GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 321 (Fourth Edition)

SHORT TITLE: Surplus Lines/Premium Tax.-AB

SPONSOR(S): Senator Apodaca

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	***None Anticipated***				
EXPENDITURES	No Fiscal Impact				
POSITIONS (cumulative):	No Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance

EFFECTIVE DATE: June 1, 2011

BILL SUMMARY:

Section 1.1 adds a new section authorizing the Commissioner to participate in a national insurance producer database for the licensing of surplus lines insurers and to contract with nongovernmental entities to collect the appropriate licensing fees and surplus lines premium taxes.

Section 1.2 directs the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the potential impact that would result from the State's entrance into a nonadmitted insurance interstate agreement and to determine which compact or agreement would result in the most retention of surplus lines tax revenue for the State. The Committee will report its findings to the 2012 Session of the 2011 General Assembly.

Section 2 adds definitions to conform State law to the federal NRRA.

Section 3 adds a new section defining "home state" as the principal place of business or principal residence of the insured, as required by the NRRA.

Section 4 amends current law to provide that a surplus lines insurer only be required to obtain authorization to write insurance in its domiciliary state, as provided in the NRRA.

Section 5 provides a streamlined process by which a surplus lines licensee (i.e. a broker or agent) may place surplus lines coverage for certain exempt commercial purchasers without conducting a search to determine whether the insurance can be obtained from admitted insurers. To comply with the new procedure, the licensee must satisfy the following: (1) the licensee must disclose to the purchaser that the insurance may or may not be available from the admitted market; and (2) the exempt commercial purchaser must subsequently request in writing that the licensee place the insurance with a non-admitted insurer. This section also defines an "exempt commercial purchaser" for the purposes of the new statutory procedure. Section 5 also provides that nothing prohibits a licensee from procuring surplus lines insurance from a nonadmitted insurer outside of the United States, known as an "alien" insurer, listed on the NAIC Listing of Alien Insurers.

Section 6 conforms State eligibility criteria for surplus lines insurers to the NAIC Nonadmitted Insurance Model Act, as required by the federal NRRA.

Section 7 makes conforming changes.

Section 8 provides that a NC surplus lines license is required only for those agents or brokers doing business with insureds whose home state is NC. (Under NRRA, only an insured's home state may require a surplus lines broker to be licensed.)

Section 9 adds language to G.S. 58-21-85 governing the surplus lines premium tax providing that the tax is collected "on insureds for whom North Carolina is the home state" as required by the NRRA. This section also provides that, to the extent portions of an insured risk are located in another state that has failed to enter into a compact with NC, any tax collected shall be retained by the State.

Section 10 revises the definition of risk retention group to conform to the definition in federal law.

Source: Research Division (May 25, 2011)

BACKGROUND:

Surplus lines insurance coverage is coverage that is not available from insurers licensed in the State, referred to as admitted insurers. This coverage must instead be purchased from insurers who are not licensed in this State, referred to as nonadmitted insurers.

The NRRA was enacted by Congress as part of the Dodd-Frank Wall Street Reform and Protection Act, signed into law in July of 2010. The federal NRRA supersedes aspects of state law regulating surplus lines insurers, requiring the State to make changes to conform to the federal law.

Most notably, the NRRA provides that only the home state of the insured (i.e. the insured's principal place of business) is authorized to tax surplus lines transactions. This change could result in the loss of significant revenue to many states. The NRRA does allow states to enter into interstate compacts for the allocation of tax revenue to prevent this loss. The NC Department of Insurance (DOI) estimates that NC may lose \$10 to \$12 million unless authority is given to the Commissioner to enter into such an agreement. *Source: Research Division (May 25, 2011)*

Surplus lines brokers will only have to pay licensing fees in their home state once the NRRA goes into effect. As a result, N.C. will also lose licensing fees from surplus lines brokers. DOI estimates that N.C. may lose up to \$65,000 because of this change. Regardless of SB 321’s implementation, DOI reports that there is no way for N.C. to recover these licensing fees after the effective date of the NRRA. Therefore, this expected $65,000 loss does not appear in the fiscal impact box on page 1 of this memo.

ASSUMPTIONS AND METHODOLOGY:

Section 1.2 of SB 321 directs the Revenue Laws Study Committee to determine if entering into a compact or agreement would result in the most retention of surplus lines tax revenue for the State. Because this bill directs a review of an option that is available to the State, Fiscal Research estimates that SB 321 would not generate any savings to the State. Fiscal Research anticipates that the Revenue Laws Study Committee would be able to absorb the additional requirement under Section 1.2 so there would be no added cost to the State.

Department of Insurance

SB 321 makes changes to the law governing surplus lines insurers to conform to the NRRA. Section 1.2 of the bill also directs the Commissioner of Insurance to work alongside the Revenue Laws Study Committee to study the impact of the State entering a multistate agreement to retain the maximum amount of surplus lines tax revenue.

DOI estimates that there will be no fiscal impact on its current operations to administer Senate Bill 321. Fiscal Research concurs with the assessment.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

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