The Role of an Association in the State General Assembly as Shown Through Mine Subsidence Legislation

An Honors Thesis (Honors 499)

by

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Purpose of Thesis

An association can be described as an organized body of individuals who have some interest, activity, or purpose in common. The role of an association in the legislative process is very important. One way to illustrate how important an association is to the legislative process is to show the effect it has on a certain piece of legislation. The vehicle used to show this importance is House Enrolled Act 1104, a bill passed by the 1992 Indiana General Assembly on mine subsidence. The paper is divided into four distinct sections. The first section introduces mine subsidence, describes the federal legislation, describes the state legislation, and informs the reader of the need for new legislation concerning mine subsidence. The second section introduces the major players and explains who they are, what they wanted from the legislation, and what they contributed to the legislation. The third section follows House Enrolled Act 1104 through the legislative process. The last section summarizes the changes to the mine subsidence statute and describes some observations of the author.
A trade association, such as the Independent Insurance Agents of Indiana and other trade groups are very important entities in the legislative process. These associations have a significant effect on many decisions that are made during the Indiana General Assembly. Without such groups, legislators would not be informed as to what the public needs or as to what the industries need to make the system run like it should. Lobbyist groups are the reason that the legislative process runs so smooth. Any group knowledgeable in the legislative process can play an important role in determining legislation. The major requirement that an association or lobbying group must establish is that they are a viable source of reference to legislators. Without the respect and persuasiveness that an association develops, they would not be able to convince the legislators to vote consistently with their views.

The important role that an association can play in the legislative process can best be shown through the discussion of the actual process of lobbying. The author's vehicle for showing the importance of a lobbyist group is House Enrolled Act 1104, a bill passed in the 1992 Indiana General Assembly on mine subsidence. The following paper is divided into four different sections, each showing a different aspect of the process that a group goes through in having an impact on a piece of legislation, such as mine subsidence. The first section describes the history of coal mining in 1850, the federal legislation, the state legislation, and the reasons why the legislation was needed. The second section describes the major players in the mine subsidence legislation including who they are, what they wanted from the legislation, and what they contributed to the legislation. The third section of the paper describes the actual process that the bill went through in the 1992 Legislative Session. The last section summarizes the changes that happened to the bill and gives some observations that the author witnessed.
I.

Mine subsidence can be described as the surface of land sinking into abandoned mine shafts hundreds of feet underground causing the earth to move and resulting in damage to houses and other buildings (Indiana Mine Subsidence Fund 1). According to the United States General Accounting Office (GAO) report, mine subsidence can be described as the gradual settling of the earth’s surface that is above an underground mine that can cause damage to nearby land and property (Coal 1). Some signs to look out for when trying to determine mine subsidence are when the foundations, the walls, the ceiling, and the ground begin to crack; the cracks grow; popping and cracking sounds can be heard; doors and windows start to stick, break or jam; the doors open and close; parts of the house begin to tilt; and the water mains break. Several of these must occur in conjunction and within a certain time period or the probability of it being mine subsidence is very unlikely (Indiana Mine Subsidence Fund 2).

Underground coal mining in Indiana started back in 1850. An estimated 150 square miles or 100,000 acres have been undermined in Indiana alone. Most of the underground coal mining has occurred at a depth of less than 150 feet. The collapse of roof strata, which is the layer of earth that is on top of a mine, occurs at a depth of 20 to 100 feet underground. This is the cause of mine subsidence (Indiana Mine Subsidence Fund 1).

Mine subsidence is critical in the following fourteen Indiana counties: Clay, Daviess, Dubois, Gibson, Greene, Knox, Parke, Pike, Spencer, Sullivan, Vanderburgh, Vermillion, Vigo, and Warrick. Mine subsidence is possible in the following twelve other Indiana counties: Crawford, Fountain, Lawrence, Martin, Monroe, Montgomery, Orange, Owen, Perry, Posey, Putnam, and Warren (Indiana Mine Subsidence Fund 1).
Although maps have been drawn up by the Indiana Department of Natural Resources and the Abandoned Mine Section of the Department of Natural Resources that chart all the coal mining that has been reported, but they are not complete. Over the years, coal mining was conducted by small operations that did not chart or map their mining activities. These small “mom and pop” mining operations occurred throughout southwestern Indiana because there was no specific regulation prohibiting regulating mining underground. Because there are no exact maps detailing the whereabouts of all the mines, the detection of mine subsidence areas is an imprecise science.

Between the years of 1983 and 1985 alone, it cost property owners about $1 million to try to repair mine subsidence damage (Indiana Mine Subsidence, Without 1).

In 1977, a nationwide program was established to regulate ongoing coal mining operations and to provide grants to states for reclaiming areas mined and abandoned before August 3, 1977 by the Surface Mining Control and Reclamation Act (SMCRA). The problem with the SMCRA was that states could not use available grant monies to restore private property damages by coal related subsidence. This caused many property owners to be left with the primary financial burden of the damage caused by coal mine subsidence because regular property insurance policies usually did not cover the damage (Coal 1). Mine subsidence insurance needed to be bought as a rider to their policy (Indiana Mine Subsidence, Without 4).

In response to the problem, in October 1984, Congress amended the SMCRA to help states start their own insurance programs for property owners that had mine subsidence related damage. Grants of up to $3 million were authorized by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to eligible states to provide “start-up money” for state administered insurance programs to become self sustaining. The grant money was taken from the SMCRA funds. States were to use these funds to design an insurance program to offset the mine subsidence damage according to their own needs and conditions. According to federal law and regulation the
stipulations or requirements to receive these funds were contingent on the states being able to create self-sustaining programs by 1994. This is the only performance criterion for assessing the efficiency of the Mine Subsidence programs. The regulation defines a self-sustaining program as “one that maintains an insurance rate structure designed to be ‘actuarially sound.’” (Coal 2). The regulation defined actuarial soundness as “having funds sufficient to cover expected losses and expenses, including a reasonable allowance for underwriting services and contingencies, but since mine subsidence predictions are an imprecise science, there are no acceptable industry standards for actuarial soundness for coal mine subsidence insurance. The only problem with the fund was that if it was used for mine subsidence, that replaced the amount of funds available to the state to correct other reclamation problems (Coal 3). This program became effective on February 13, 1986 (Coal 2).

Of the twenty one states that were eligible to receive these grants, only Colorado, Indiana, Kentucky, Ohio, West Virginia, and Wyoming applied for the grants. The remaining other states gave one of three reasons that they did not want to apply for the mine subsidence grants. The states either believed that they would not experience very many subsidence situations, they would rather use the available funds for other purposes, or they did not think that they would be able to establish a self-sustaining insurance program because they anticipated very low property owner participation (Coal 2).

The first law in Indiana dealing with Mine Subsidence was proposed and passed in 1986 by the State legislature. Because mine subsidence was not considered a peril in 1986, a state pool was established called the Mine Subsidence Insurance Fund (Notes 1). Although the subsidence insurance program is state administered, federal grant money is being used to fund part of the program’s operations. The other part of the program is being funded through the premiums that the insureds pay. The responsibility of ensuring that grants are only awarded as intended and that those
states receiving those awards are making progress toward achieving the grant objectives is that of the OSMRE. A passive role had been taken by the OSMRE in managing the grants and providing oversight to insure that the objectives of the program were being met. According to the OMSRE as of September 30, 1990, only six grants awarded in 1986 and 1987 totaling $11.3 million were involved from federal funds. OSMRE said that the resources needed to actively participate in state administered programs were threatened because of the passive stance that was being taken for the grants. Among these grants, West Virginia was awarded $375,000 and both Colorado and Kentucky awarded $3 million each (Coal 3).

On March 28, 1991, a report from the United General Accounting Office (GAO) was filed. The report was in response to a request to examine the efficiency of the Department of the Interior’s Office of Surface Mining Reclamation and Enforcement’s efforts to implement the federally assisted coal mine subsidence insurance program. The GAO reviewed the efforts of the six participating states to see if they were developing a self-sustaining insurance program. They were also to assess the OSMRE’s oversight of those efforts (Coal 1).

The GAO report stated that Ohio and Indiana may not be progressing toward self-sustainability in their insurance program. They had five years and had not become self sustaining or even close. The GAO report also stated that the difficulty that the states were facing in becoming self-sufficient was due to the inadequate participation of eligible property owners and that the solvency of the mine subsidence fund was based on high participation. When the participation rate is low, sufficient premium income can not be produced and the solvency of the fund could be threatened if a major mine subsidence event were to occur (Coal 1).

Legislation was needed in 1992 because the fund was about to expire and Indiana had not yet established a self sustaining mine subsidence program. A letter was received by the Indiana Department of Natural Resources notifying them that the federal Office of Surface Mining and
Reclamation and Enforcement intended to terminate Indiana's mine subsidence grant because they were not following the requirements of the statute to become self sustaining (Hallawell 10). There were five reasons given for the termination of the fund and they include the failure of the General Assembly to approve the mandatory subsidence insurance coverage, the fact that Indiana was not progressing towards self-sustainability as the grant stipulated, the relationship between the Indiana Department of Natural Resources as the grantee and the Indiana Department of Insurance as the administrator was not defined, the process of determining mine subsidence was not developed, and the availability of mine subsidence insurance was not sufficiently publicized (Hallawell 10). This is what started the process of mine subsidence legislation in the 1992 Indiana General Assembly.

II.

The organizations or groups that contributed the most to the passage of the mine subsidence bill were the Insurance Institute of Indiana, the Professional Insurance Agents of Indiana (PIA), the Independent Insurance Agents of Indiana (IIAI), the Department of Natural Resources, and the Indiana Department of Insurance. The following section describes the purpose of these organizations, what these organizations hoped to accomplish with the legislation, and what these organizations contributed to the legislation.

The Insurance Institute of Indiana, Inc. is a non-profit trade association of major property and casualty insurance companies that represents 69 members in areas of public relations, public education programs, government relations, and legislative liaison (Indiana 19). The Institute is not only dedicated to keeping the insurance climate one of the best in the nation, but is also ready to provide resource information regarding the property and casualty insurance business to legislators, legislative staff and regulatory agencies (Insurance 1).
The Independent Insurance Agents of Indiana, Inc. (IIAI) was founded in 1898 and represents 800 agencies and more than 5000 agency owners and employees in Indiana. The Association deals with all property and casualty insurance issues, safety, small business issues, and regulatory issues. Their goal is to promote and serve the best interest of the insurance consumer and the American Agency System. The American Agency System is a system used by independent agents which allows them to choose coverage from many insurance companies instead of direct writers who use one designated insurance company (Insurance 7). The IIAI serves independent agents statewide by supporting proper practices, offering worthwhile agency products and services, and providing education and information on current industry concerns. The Independent Insurance Agents of Indiana are members of the Independent Insurance Agents of America, Inc. based in Alexandria, Virginia. It is the nation’s largest independent producer's association which represents more than 220,000 independent agents and their employees (IIAI 1).

The Professional Insurance Agents of Indiana (PIA) represent 300 Property and Casualty insurance agencies in Indiana. The PIA provides information and education about the American Agency System to all levels of government and to the private and consumer sections of the economy. They primarily deal with property and casualty insurance issues as they relate to their membership and to the consumers of Indiana (Insurance 7).

The Department of Insurance is a department that has the duties of organization, supervision, regulation, examination, rehabilitation, liquidation, and/or conservation of all insurance companies and may exercise other powers that may be imposed by law (I.C. 27). The Department of Natural Resources (DNR) has oversight concerning the conservation of the state’s natural resources. Some of these resources consist of oil, state parks, water, and recreational areas. The DNR functions under a twelve member Natural Resources Commission. Of the four bureaus that compose the
DNR, the Bureau of Mine Reclamation is responsible for mine subsidence. The divisions of the Bureau of Mine Reclamation include geological survey, oil and gas, and reclamation (Here 18). Both of these commissions are appointed by the current Governor.

The common thread that tied the PIA, the Institute, and the IIAI together was that they did not want to see the mine subsidence legislation die this year. The death of the bill this year would have caused the loss of the federal funding for the mine subsidence program. Although they worked together to pass the legislation, each one was involved for different reasons (Interviews).

The Indiana Insurance Institute was involved because they wanted a method of consistent claims handling so that they would have a set guide and could deal with each claim identically. The Institute also wanted both financial and personnel assistance from the Department of Insurance in handling mine subsidence claims. A method of distributing information in a way that the cost would not be so astronomical was desired by the Institute so that they could control expenses. The Institute was also concerned about liability. The mine subsidence law stated that an agent and/or insurance company was liable if they issued a policy when there was preexisting damage due to mine subsidence. They did not believe that they should be liable if they were not aware of the mine subsidence when they issued the policy. The Institute did not want to be responsible for determining mine subsidence damage because they did not feel that they were qualified to make that decision (Interviews).

The Independent Insurance Agents of Indiana (IIAI) was involved for many reasons. They wanted mine subsidence coverage treated like a peril, a cause of loss, so that it could be handled the same as other coverages in the policy. Like the Institute, the IIAI also wanted consistent claims handling. The IIAI did not want to assume the liability for preexisting damage when they did not have the knowledge or manpower to know whether or not there was mine subsidence damage on the property before they issued the policy to the homeowner. They wanted someone else to be able to
recognize preexisting mine subsidence damage and inform them of its existence because they were not qualified to make that distinction. An inexpensive method of distributing information was also desired. They did not want the agents to carry the financial burden of making the mine subsidence program successful (Interviews).

The PIA was involved because they had mostly the same views on mine subsidence as the IIAI. They wanted mine subsidence treated like a peril. They felt that claims handling should be consistent so that someone could recognize mine subsidence damage and inform them of its existence. Like the IIAI, the PIA wanted a reasonable method of distributing information that was not costly because they did not want their agents to carry the financial burden of making the program successful (Interviews).

The Department of Natural Resources was also a key player in the mine subsidence legislation. They were involved with the mine subsidence legislation because they needed to revise a procedures manual on mine subsidence. They also believed that there were administrative problems with the fund caused by the Department of Insurance that needed to be addressed (Interviews).

The Insurance Department wanted to guarantee large participation in mine subsidence so it could become self sustaining. They suggested a mandatory roll on with a sign off because they believed that it would cause the most participation. A mandatory roll on with a sign off would force all policyholders in the twenty six counties to have mine subsidence insurance added to their policy until they signed a waiver designating that they did not desire the coverage. The Department of Insurance believed that this was the most stringent way of getting the largest participation while still having the legislature agree to vote favorably on the bill (Interviews). The mine subsidence bill was also being proposed by the Department of Insurance in order to increase the fund far beyond the $500,000 that it consisted of now (Gislason 2).
November 12, 1992 marked the first meeting in a long line of discussions concerning the mine subsidence legislation that the Department of Insurance was going to submit. Members of the Indiana Insurance Institute, the PIA, and the IIAI met in the offices of the Institute. They felt that they needed to meet prior to the meeting with the Department of Insurance so that they could discuss their ideas and know exactly how to present these ideas to the members of the committee at the Department of Insurance. They discussed each others views and what each wanted to accomplish through the mine subsidence bill. Two hours later, the IIAI, the PIA, and the Institute met with the Department of Insurance and discussed their ideas. This also was just a preliminary meeting to discuss their ideas and decide what information was needed for the next meeting. They set up a meeting for November 18, 1991 (Interviews).

The meeting that took place on November 18, 1991 was the major step in developing the mine subsidence legislation. The major players in the meeting were the PIA, the IIAI, the Insurance Institute, and the Department of Insurance. The opening remarks of the November 18, 1991 meeting were again intended to stress the importance of introducing and passing legislation that would effectively solve the mine subsidence problem. The members at the meeting were informed again that those individuals in charge of the federal grant were going to go to the Secretary of the Interior to recommend that the money going to the program be withdrawn and allocated elsewhere. The federal grant members did not feel that they need to allocate any more money to Indiana because the mine subsidence program would not be self-sustaining by the end of the grant period in 1994. The Department of Insurance is a sub-grantee or administrator of the mine subsidence fund, and the Department of Natural Resources is the direct grantee under the Office of Surface Mining. The Department of Insurance felt that the legislation proposed the year before was not acceptable to the insurance industry and decided that they would consult with them this year to make sure that
they could organize legislation that would pass and make the fund self-sustaining. The year before
they did not consult with the insurance lobbyists and the bill was killed. The insurance lobbyists
were the key to the success of the legislation and their input was essential (Statistician).

There were many topics of interest discussed at the November 18 meeting. Among these
topics were the Ernst and Young study, the number of counties that would be participating, whether
or not to have an in house expert, claims procedures, how the counties would be listed in the statute,
agent responsibility, making mine subsidence a peril, advertising of the mine subsidence insurance,
comparisons to the other states, and the misconceptions of the GAO report. These were not only the
major topics that were discussed at the meeting, but were the basis for all of the changes in the

Roger Ronk, Vice President of Government Affairs for the Independent Insurance Agents of
Indiana, asked how the actuarial study that the Department of Insurance was having conducted was
progressing. The Department of Insurance informed him that Ernst and Young were doing the study
and that there was going to be a meeting with Ernst and Young on November 22, 1991 for a status
report. The purpose of the study was for Ernst and Young to make recommendations to the
Department of Insurance based upon their review of the Indiana program compared to that of the
other states. Upon completion and analysis of the data, they would then make suggestions as to the
most effective way to make the program self-sustaining. There were two key criteria that the
Indiana mine subsidence program was based upon in the report and they were the level of
participation of the effected counties and the point at which the Indiana mine subsidence fund would
become self-sustaining (Statistician).

Another topic discussed at the meeting that was of great concern to the insurance industry
was the number of counties that were going to be participating in the program and the way in which
the insurance would be offered. Dave Reddick, the Deputy Commissioner of the Insurance
The Department said that he thought that all twenty-six counties would be participating since that was the number of counties listed by the Department of Natural Resources. This opinion was not shared by all of the members at the meeting. Roger Ronk, Vice President of Government Affairs for the IIAI proposed that the Department of Insurance only take the most severely effected and make them the counties that must participate. He felt that by only having the most severely affected counties participate, Indiana could determine better their percentage of homeowner participation as compared to other states. Indiana has one-hundred per cent county participation while some of the other states have partial county participation (Statistician).

The insurance industry suggested a mandatory offer to the insured. The insured would be informed of the availability and the cause of the mine subsidence on all new policies and renewals. The insurance industry would like to focus on the fourteen most severely affected counties. All the homeowners and commercial property owners would be renotified every year until 1994 so that they would have ample opportunity to purchase the insurance. This not only enables all of the property owners that desire to carry mine subsidence insurance to purchase the coverage, but also would keep those that would never want to buy coverage from having to sign off the coverage. As of 1991, the mine subsidence coverage was made available upon the request of the insured. Commissioner Dillon, of the Insurance Department, wanted to still roll it on and give the option of rolling it off. Seventy per cent would not want the coverage because there are no mines located in their area (Statistician).

Another topic of discussion at the meeting involved an engineer that would serve as an expert in determining mine subsidence damage. The insurance industry believed that the Department of Insurance should hire a technical expert that would be able to determine mine subsidence and make that person available to the agents when determining both the existence and preexistence of mine subsidence. This would make it the responsibility of the Department of
Insurance to make the determination of the denial or the payment of a claim. There were three main concerns dealing with the engineer and they included whether to contract with an outside engineer or hire an in-house expert, at what point that the engineer would enter the process, and to make sure that the engineer not only determined the existence or absence of mine subsidence but also educated the adjuster on mine subsidence (Statistician).

One important determination the Department of Insurance needed to make was whether to have an in-house full time staff person to review claims or whether to contract with competent experienced engineers on a contract basis outside the department to review the claims. Since an engineer is expensive, the Department of Insurance had to make the decision based upon the number of claims that have been made and the cost of checking those claims. The consensus was that there needs to be contracts set up outside of the Department of Insurance because it is impossible to train all the adjustors to deal with the issue on a professional level without proper education on the subject. It was also determined that after doing research, it would not be cost effective to have an in house expert to do the mine subsidence handling. An outside firm has both more expertise and more manpower to not only deal with the investigation but to quicken the process (Statistician).

The next important question concerning the mine subsidence expert was at what point the engineer would be brought into the process. Some believed that when the insurance company determined that the claim was possibly mine subsidence, the Department of Insurance should then come and handle the process from there. Another suggestion was that the mine subsidence engineer reports what the damage is and the company estimates how much it will cost because they are more familiar with the cost of insuring and the value of the property. The insured will be told that “based on what the engineer estimated the damage is and what is not repairable, here is the value of the claim.” The company would still write the actual check with the determination of the dollar amount
of the check based on the engineers files from the investigation. This file would also make review quicker because it would be documented and described why the decision was made to approve or deny the claim (Statistician).

The problem with the Department of Insurance affirming or denying claims was that by law, the insurance company is the only party that can do this because they are the ones with the contractual relationship with the insured. The Department of Insurance wanted to somehow get a contractual relationship between the insured and the Department of Insurance because the insurance industry wanted them to check the claims. This is only a governmental reimbursement program but the insurance industry also wanted the Department of Insurance to determine whether or not the claim was valid. The Department felt that if they were the ones making the determination, they should be able to both make a profit from it and to inform the insured what they had decided (Statistician).

It was decided that the investigation would be done by representatives of the office of the Department of Insurance which would reduce the expenses for the company and would cut down on the amount of time that would have to be put into adjusting mine subsidence claims. It would make things much quicker and all of the companies would have consistent claims handling. Part of what the company adjuster would do is get the basic information in a form that the engineer can review before they go out and look at the claim. The information would tell such things as which cracks have been there for years and where water has been built up for the past ten years. The engineer would fill out a form and all the claims would be documented. This document would decide whether a claim would be denied or paid on a factual basis (Statistician).

Another important issue dealing with the engineer is that the insurance industry not only wants the engineers to work on the claims, but they want them to educate the adjustors and agents as
well. If the engineers educate and inform the adjusters and agents, they will be better qualified to deal with the claim on the initial day so that they know what to look for and what information the engineer wants (Statistician).

The next question that followed that related to the previous discussion was what does the insurance industry do when they sell the policy but are not expert enough to tell when there is preexisting mine subsidence damage. Some ideas were suggested. One of the ideas was that the agents can go ahead and sell the mine subsidence insurance and when the policyholder files a claim, it can be determined whether or not there was preexisting conditions. Upon this determination, it can be decided whether to deny or pay the claim. It would be both enormously expensive and very difficult to check every structure before it was covered (Statistician).

Another matter that was discussed at the meeting was that of how the counties would be listed in the legislation. There were two distinctively different views on how the counties should be listed that are affected by the mine subsidence. Steve Williams of the Insurance Institute believed that the list should be included as part of the statute because if the list were left to the discretion of the Department of Insurance, it would give them too much flexibility and it would be difficult to keep track of. The Department of Insurance wanted the statute to refer to a list that they would keep updating according to what counties should be covered by the subsidence insurance. They believed that if they put a list in the legislation and wanted to change the list, they would have to start the process with the legislature over when it would be simple to just change a name. The Independent Insurance Agents agreed that the Department of Insurance should make and keep a list of the counties that were eligible for the mine subsidence insurance (Statistician).

Another issue that was brought up was the agent responsibility for writing a policy when there was preexisting mine subsidence damage. The IIAI, PIA, and the Institute did not believe that they should be held responsible for preexisting damage when they were not qualified to detect the
subsidence. They said that if the statue was written in an attempt to deal with fraud, that was different, but it would be hard to prove. The language was wanted by the Department of Insurance since there had been fraud on several claims. The problem that they have been dealing with is that agents would add mine subsidence to homeowners, or renewal of the homeowners policy and two months later the insured would file a claim and try to collect for the mine subsidence damage. When the adjuster investigated the claim, the owners would say that they cracks have been there for years. The Department of Insurance was trying to strengthen the language because the statute now said that an insurer does have to sell mine subsidence insurance if there are signs of unrepaired damage. The Department of Insurance wanted the statute to read that an insurer could not sell mine subsidence damages if there were signs that there was unrepaired damage (Statistician).

The discussion of how mine subsidence should be treated was discussed next. The insurance industry wanted to see mine subsidence treated like a peril. They would like to have the insured buy $75,000 worth of coverage. That would take care of the property and structures on the property so they would not have to insure each structure. The homeowners policy simply rolls 10% coverage to out buildings or personal structures, the insurer does not insure each structure separately. As of 1991, mine subsidence insurance cost between $15 and $38 a structure depending on the amount of coverage that the insured desired to purchase (Statistician).

Advertising was discussed at the meeting because that was one of the problems that the GAO report have identified as being a reason for the low participation rate of the program. A new advertising strategy needed to be implemented this year in advertising, marketing, and public relations that was very aggressive and was available to all 26 counties for education and public awareness. The sponsor of the grant said that not enough money had been spent on the mine
subsidence study and advertising of the coverage. It was proposed that the increased expenditures be given to the study, the marketing campaign, and outside engineering firms to do the investigations (Statistician).

There were two misconceptions that can be found in the GAO report that were discussed at the meeting. The GAO report stated that Indiana and Ohio were not progressing toward self-sustainability because of their low participation rates. The participation rate is calculated by taking the ratio of participating property owners to the total number of eligible property owners in counties considered vulnerable to mine subsidence. As of September 30, 1990, participation rates for Indiana and Ohio were eight per cent and one per cent respectively. They felt that the rate was too low to generate sufficient premium income to meet the insurance reserve requirements for anticipated claims. The GAO report stated that the low participation rates could be attributed to the fact that their state’s laws do not require insurance companies to automatically include subsidence coverage in all standard property owner policies. With an automatic coverage, the counties that were considered endangered by mine subsidence would be required to add the coverage and pay the extra premiums unless they waive the coverage (Coal 4).

The GAO report is not completely correct in their assumption that Indiana has such a low participation rate. The other states have higher participation rates because they only include in their statistics the counties that are willing to participate. In Indiana, all twenty-six counties are counted in the participation rate and this makes it lower. If Indiana were to calculate and only count the fourteen counties that are directly affected by the mine subsidence and calculate that percentage, those percentages would surely be comparable to that of the other states.

The other misconception that can be found in the GAO report is that Indiana has never enacted legislation that would mandate automatic coverage for the mine subsidence insurance. Mandatory coverage with the sign off did take place in 1986. In 1986, the way that the statute was
originally written, coverage for damage due to mine subsidence must be available through any insurance policy described in class 3-A. According to I.C. 27-1-5-1, Class 3-A describes all of the losses or damages which buildings and personal property can be insured against. The mandatory coverage went on the policy unless the individual said no in writing. The next year, Representative Poole essentially repealed the entire impact of the mandatory coverage and said the person would have the coverage if they asked for it. That is the way it has been since. When the coverage was mandated, it was 100% across the board and 99% signed off (Notes 3).

Roger Ronk, IIAI, prepared a comparison of the other states for the meeting. He called the other states and discussed what and how they had arranged their mine subsidence programs and what made them self sustaining. He wanted to incorporate some of those ideas into the Indiana mine subsidence program to decide whether or not they could be successful. He compared Indiana to four other states in their levels of participation, administration of their programs, coverage periods and rates, claims management, numbers of claims submitted, and the numbers of counties participating. The results are on a grid found at the end of the paper (Grid 1).

The meeting closed with Roger Ronk suggesting that the Department of Insurance do a survey on the fourteen counties’ participation to show the Department of the Interior that Indiana is comparable in participation rates to the other states. By showing the Department of Interior that Indiana is comparable to other states in participation rates, the Department of Interior may decide not to revoke the grant money. The final decision of the group was that a mandator offering on renewals and new policies would make the program self-sustaining. They also decided to start the bill in the House of Representatives this year because they thought that as quickly as things would be progressing, the give and take between the legislators and the lobbyists would be more prevalent.
Another meeting was held on January 17, 1992. This was a meeting between the same individuals that were at the meeting on November 18, 1991. The meeting was called because the Department of Insurance did not remember what the insurance lobbyists had discussed with them concerning the mine subsidence legislation. The meeting was held and the Department was told the exact same information once again from the insurance lobbyists. Unfortunately they still did not understand what the lobbyists wanted and tried to introduce last years bill back into the General Assembly.

III.

During the 1992 Indiana General Assembly, House Bill 1104 was introduced into the legislative process. House Bill 1104 was a Department of Insurance bill intended to solve the mine subsidence problem. The Department of Insurance tried to institute the same bill this year again as they had in 1991. The year before, the insurance lobbyists did not have time to deal with it so they had it killed. Although this year the Department of Insurance had consulted with the lobbyists and received their input, they still sat on the bill and tried to put the same one in as the year before. This was not agreeable to the PIA, the IIAI, and the Insurance Institute because they already had two sit down meetings with the Department and at each meeting had said the same things. The Department did not take any of the suggestions that were discussed, so the PIA, the IIAI, and the Insurance Institute went to Legislative Services and had their own draft of the bill prepared and introduced as the Department of Insurance bill. The Department then stepped in and supported the bill.

On April 3, 1991, Jim Gislason, an insurance agent and Vice President and General Manager of United Insurance Services, Inc., in Vincennes and a member of the Independent Insurance Agents
of Indiana, made a speech opposing HB 1670, which was a 1991 proposed bill dealing with mine subsidence. His speech included many of the same reasons that most of the insurance lobbyists opposed the legislation in 1991. He said that in 1986, the first bill concerning mine subsidence (IC 27-7-9) included mandatory mine subsidence insurance. The 1991 bill was essentially the same as the 1986 bill. Companies were required to add mine subsidence coverage to all property policies both new and renewal in the affected twenty six counties in southwestern Indiana. Customers were not happy about the increase in premiums. When an agent sent out a renewal with an increase in premium, he had to send a letter that explained the increase and how to reject the coverage to receive a refund. If the insured did not want the coverage, they had to mail the rejection form back to the agent, the agent then had to mail it to the insurance company and enclose a properly completed endorsement request form. The insurance company then processed the endorsement that removed the unwanted coverage, and mailed it back to the agent. The agent then updated his files and mailed a copy of the endorsement to the insured and to the mortgagee, if there was one. This process would take a few weeks because every policy for the southwestern part of Indiana would be affected. To keep their policy in force, the consumer would have to pay for the unwanted coverage first and then wait for a refund (Gislason 2).

The insurance lobbyists opposed the mandatory coverage because of the cost to the insurance agencies who must bear the burden of deleting unwanted coverage for their customers. The cost estimates based on 7/24/91 postal rates designated that it would cost agents who handle mandatory roll on with a waiver to sign off for mine subsidence insurance coverage an estimated $4.93 per insured. This breakdown of the cost is included on a page in the back of the paper (Cost 1). For this mandatory coverage to be considered cost effective, seventy per cent of the customers would have to agree to pay for the mine subsidence coverage (Gislason 2).
In order for the mandatory coverage to work, the legislators would have to make the coverage mandatory with no option to waive the coverage. By making it law for everybody in Indiana to carry mine subsidence coverage, premiums could be greatly reduced and the fund substantially increased. The big plus would be that it would not cost the agencies thousand of dollars to have the coverage removed (Gislason 2).

The insurance industries' experience in 1986 and since then has been that individuals who live in areas that have been mined would buy coverage if they could afford it. People that live in such places as Vincennes, Evansville, Terre Haute, etc., where mining has never really occurred, would refuse the coverage because it would be unnecessary. Mine Subsidence needed to remain a voluntary coverage that could be available to those who desired to have it just like fire insurance, life insurance, or crop insurance. Jim Gislason believed that it should not be mandated to them and that if the coverage was to be mandated on all twenty six counties that may be affected by subsidence in the hopes that they would pay the premiums whether they needed it or not, was not good public policy (Gislason 3).

On January 6, 1992, House Bill 1104 was read for the first time. It was referred to the committee on Insurance and Corporations. The author of the bill was Representative Denbo. He was the author of the bill as a favor to the Insurance Department. He had no training to deal with mine subsidence. It was also like this with the co-author Representative Crosby. It is not uncommon for the author not to understand all the technical aspects of the bill. Lobbyists often provide the information that legislators need to know on certain issues. On January 8, 1992, Representative Becker was added as a co-author.

The committee report was filed on January 16, 1992 and was adopted do pass amended. In the House of Representative committee meeting, many changes were considered in the mine subsidence law. In section 3, the word "underground" was changed to "inactive" in the definition of
mine subsidence. A structure owned by a public or governmental entity was added in section 5 to
the terms that were not included as a structure. Section 8 was changed to state that mine subsidence
coverage was included as a separately stated premium instead of as just was available. This clarified
that the coverage had to be added. The same section reiterated though that it was not required to be
included if it is waived in writing by the insured. In the same section, a date was added that stated
that after July 1, 1992 an insured issuing or renewing a policy to cover one or more structures that
were located in one of the specified counties should include mine subsidence coverage. The name
of the counties that were covered were deleted and were referred to in a list that the Department of
Insurance would keep track of and that was identified in section 6 of the same chapter.

Information concerning informing the insured of premium information was deleted.

Previously in the law, the insurer had the right to deny mine subsidence coverage to an insured if the
structure showed evidence that there was unrepaired mine subsidence damage. Now it was proposed
that the law say, “shall not include” any structure that showed evidence that there was unrepaired
mine subsidence damage until it was repaired. Times when reimbursement would not occur to the
insurer was added. They were when the insurer included the mine subsidence insurance when the
structure showed loss or damage in progress or when the insurer should or could have known upon
investigation that the structure being covered evidenced subsidence damage or a loss or damage in
progress. A part was added that stated the commissioner shall pay 50% of expenses incurred by
experts in determining mine subsidence and that it would be taken from the mine subsidence fund.
The expert must receive the approval of the commissioner as to the need for the expert. The expert
may, but did not have to be an engineer, a surveyor, or a geologist.

During the committee meeting, the following changes were accepted and amended and then
passed. In section 3, instead of deleting underground and adding inactive, underground was kept
and inactive was added. In the definition of mine subsidence, the words “abandoned before August
3, 1977” were added. A definition of a “peril” was added and defined as the cause of a loss, such as a fire, an explosion, or a flood. Instead of referring to a list that was given in section 6, they added the twenty six counties by name. The counties that they had deleted in the first draft were put back in and named. The date that was stated that customers who renewed or issued a new policy were to be informed was changed from after July 1, 1992 to before July 1, 1994.

Language was taken out that stated that the insurer did not have to inform the policy holder more than one time. Language was subtracted that said that the insurer did not have to be notified if they did not live in the fourteen counties unless asked. The information about the premium was put back in the bill. Section 4 changed the way that mine subsidence coverage was handled. It made it apply to structures the same as coverage was for other perils under the policy. It stated that when determining as to what to pay, payment was limited to the amount of damage to the structure when the damage occurred, not when it became reasonably observable. Language was added that took the liability off of the agents, insurer, or an employee of an insurer. It stated that neither an insurer, an agent of an insurer, nor an employee of an insurer was obligated to investigate for mine subsidence damage that may have occurred before the issuance or renewal of a policy including mine subsidence coverage. They were also not liable for mine subsidence damage that occurred before the issuance of a policy including mine subsidence coverage.

A new section was added that gave the insurers the experts that they were promised in the November 18, 1991 meeting. The new section said that the commissioner shall provide insurers with assistance for the purpose of adjusting claims against coverage by individuals with technical expertise in mine subsidence. The commission was given the right to expand the staff of the Department of Insurance and enter into contracts with persons with technical expertise who would provide services to the insurer. Like discussed in the November 18, 1991 meeting, the insurer was responsible for adjusting the claim against a policy that included mine subsidence coverage until the
insurer made a preliminary determination that the loss may have been caused by mine subsidence. At that time, the technical expert would adjust the claim and the cost of adjusting the claim would be paid from the mine subsidence fund.

On January 23, 1992, House Bill 1104 was read for the second time. It was amended and ordered engrossed. During the second reading, amendments were offered and the following were changes made. In the definition of a “peril”, a motor vehicle was added to the list of the causes of a loss. In the definition of a structure, a dwelling, building, or a fixture that was owned by a public or governmental entity was added to the terms that were not included in a structure. In section 8, the names of the counties were taken back out of the bill and the statute referred to the list in section 6 of the bill for the counties that were affected. In the same section, the other list that was just added was eliminated and it was stated that the counties were those listed in section 6.

In the section dealing with the premium, the words “purchased that coverage” was replaced by “requests that information.” The word “may” was changed to “must” when referring to declining mine subsidence coverage where there was evidence of unrepaired mine subsidence damage. A few words were changed in the role that the technical expert would play in the claims process to clarify a few things. It changed the words “the individuals with technical expertise” to “those retained by the commissioner and insurer in determining the existence of a mine subsidence event.”

On January 27, House Bill 1104 passed the third reading with a roll call vote of 100 yeas and 0 nays. It was referred to the Senate and Senator Pease and Hume were the sponsors while Senator Doll was the co-sponsor. At the first reading of House Bill 1104 in the Senate, it was referred to the Committee on Insurance and Financial Institutions. On February 4, 1992 the Committee on Insurance and Financial Institutions reported the bill do pass adopted. Senator Worman passed the bill out of the committee meeting late that night and promised the insurance lobbyists that they would get to amend it in the second reading. They wanted to put amendments in at the committee
meeting, but in the interest of time, they conceded.

The Independent Insurance Agents' grassroots network came alive in the Mine Subsidence bill during the committee meeting in the Senate. The grassroots network is very important in an association. At the Independent Insurance Agents, the grassroots network is made up of 500 individuals that will, when called upon, call or write their legislators. Individuals are only put in the computer that know legislators and are willing to call them when asked. By only sending mail to those that will respond, time and money is saved. During the legislative session, these people are sent weekly updates on the issues that are going on in the General Assembly. This year, two individuals were asked to speak on the mine subsidence bill that were in the grassroots network. Jim Gislason of Vincennes and Bob Dillow from Evansville are members of the Independent Insurance Agents of Indiana and stood up and spoke in support of the legislation. Although Jim Gislason had opposed the legislation last year, he believed that this year's bill would effectively fix the program (Grassroots 1).

During the second reading of House Bill 1104 in the Senate, amendments were made and the bill was ordered engrossed. The following amendments were offered and accepted. In the definition of a "peril", a motor vehicle accident was taken out as a cause of a loss. This occurred because Roger Ronk informed the Department of Insurance that a motor vehicle accident was not an example of a peril. "Before July 1, 1994" was taken out when referring to the date an insurer must notify the insured when issuing or renewing a policy. Subsection B of Section 8 was deleted and a new statement was written. It stated that an insurer shall inform the policy holder or prospective policy holder of the availability of mine subsidence coverage each time issued and each time renewed unless the issuance or renewal was after June 30, 1994 or the policy to be renewed already included mine subsidence coverage. This made the requirement more legible and workable for the insurance industry.
House Bill 1104 passed third reading with a roll call vote of 49 yeas and 0 nays in the Senate. It was returned to the House with amendments. On February 10, 1992 the House dissented on the Senate amendments. House conferees Denbo and Becker were appointed on February 10. On February 11, Senate conferees Pease and Hume were appointed. On February 13, the conference committee report was filed in the house, the rules were suspended, and the conference committee report was adopted by the house by a roll call vote of 99 yeas and 0 nays. Also on February 13, 1992, the conference committee report was adopted by the Senate with a roll call vote of 50 yeas and 0 nays. House Enrolled Act 1104 was signed by the Governor on February 24, 1992 and was put into law.

Throughout the legislative process, the only real proponent of the bill was Representative Pool of Crawfordsville. He believed that the receiving of notices of the mine subsidence insurance was nonsense and was not necessary because it really did not effect his constituents. He did not understand why his constituents had to be bothered with mine subsidence at all.

Throughout the legislative process, Roger Ronk, from the IIAI, talked to legislators, dined with legislators, and persuaded them to vote the way that he thought was right. He and the other lobbyists shared the ideas on changes and all the information that they had learned from their talks with the legislators. At least two times it was attempted to amend the Insurance Department bill concerning mine subsidence to include banking issues. Both times the Department of Insurance persuaded the legislators not to interfere with their Department bills. The legislators had to find three other bills during the conference committee to try to institute these banking reforms.

Mine Subsidence was brought to the attention of the federal legislators when members of the IIAI went to Washington D.C. on March 24 and 25, 1992. When Roger Ronk and the other members that went to Washington met with their congressmen, mine subsidence was one of the
issues that was discussed. The federal legislators from Indiana were informed about what happened to the mine subsidence bill in the 1992 Indiana General Assembly. They were informed about the reasons that the bill was not legislated in the manner that they had proposed it to be. They were also informed why a mandatory offer was superior to mandated coverage with a sign off.

IV.

The mine subsidence insurance is located in IC 27-7-9. Many new changes did occur and all of them were directly caused by the different associations that worked together to make the legislation pass this year. All of these changes had been discussed in one form or another in the November 18, 1991 meeting at the Department of Insurance. The definition of "Mine Subsidence" was changed to read the collapse of "Inactive" underground coal mines "abandoned before August 1977," resulting in damage to a structure. Section 3.5 was added to give a definition of a "Peril." Peril means the cause of a loss, such as fire, an explosion, or a flood. Roger Ronk of the Independent Insurance Agents tried to have the definition of a peril removed. He said that attorneys would try to use this definition to make mine subsidence mean something else.

Section 5 was changed to add a dwelling, building, or fixture that was owned by a public or governmental entity to the terms that did not include structure. Section 8 was amended to eliminate the naming of the counties that were effected by mine subsidence in the statute. This was because it was finally decided that if they named the counties, every time a county changed, they would have to go through the process of changing the law and that would be hard to do. They felt that the Department of Insurance could just keep a list and a reference could be made to that list in the statute. Some people did not believe that this would be good because then it would be up to the discretion of the Department to decide who was going to be eligible for the insurance and who was
going to be eligible to be told about the insurance when they either received a new insurance policy or renewed their old insurance policy.

Language in section 8 was taken out that stated that a policy holder or prospective policyholder was not required to be informed by the insurer of the availability of mine subsidence insurance coverage if no structure was located in the counties unless policy holders requested information about the coverage. They also were not required to inform them more than one time. After the insurer provides information about the coverage before insuring a policy to the person, they are not required to provide information again after issuing the policy to the person. In its place, new coverage stipulations were put in. Now the insurer is required to inform the policyholder or prospective policyholder of the availability of mine subsidence coverage when a policy is issued and each time it is renewed. If the policy to be renewed already includes mine subsidence coverage or the issuance or renewal of the policy will take place after June 30, 1994, then the insurer is not required to inform a policyholder or prospective policyholder of the availability of the mine subsidence coverage.

Parts of section 8 were taken out that referred to the amount of premium that was to be paid for the mine subsidence insurance. It stated that the insurer was required to inform the policyholder of the premium if the structure was located in one of the fourteen counties and was not required to tell them the premium if they were not located in one of the fourteen counties unless they asked to be informed. It also had stated that the insurer was not required to inform the person of the amount of the premium unless that person purchased the insurance from that insurer. The law was changed to state that an insurer “must” instead of just “may” decline to make the mine subsidence coverage provided available to cover a structure evidencing unrepaired mine subsidence damage until
necessary repairs were made.

Section 8.4 was added to state that mine subsidence coverage added to any other coverage must apply to structures in the same manner as coverage for other perils under this policy. The law was changed to state that the amount payable through mine subsidence insurance is limited to the amount of insurance at the time when the damage to the structure or structures occurs. Also stated is that neither an insurer, an agent of an insurer, nor an employee of an insurer is obligated to investigate for mine subsidence damage that may have occurred before the issuance or renewal of a policy including mine subsidence coverage unless specifically informed of such damage by the insured or prospective insured. It also states that neither an insurer, an agent of an insurer, nor an employee of an insurer is liable for mine subsidence coverage.

Section 9 was amended to deal with adjustment of losses and payments of taxes. It stated that under the mine subsidence coverage issued by the insurer, with technical assistance provided under section 9.5 the Department must undertake the adjustment of losses. Section 9.5 was added to allow the commissioner the ability to provide insurers with assistance from persons with technical expertise in mine subsidence so that they could assist with the adjusting of claims dealing with mine subsidence. Under this section, the commissioner may either expand the Department of Insurance staff, or obtain technical expertise from others to insurers to determine subsidence events. When an insurer is adjusting a claim against a policy that includes mine subsidence coverage, the insurer is responsible until the insurer makes a preliminary determination that the loss may involve mine subsidence. At this time, the experts assigned by the commissioner will assist the commissioner and the insurer in determining the existence of a mine subsidence event. The cost will be paid by the mine subsidence fund. Section 8.5 as amended by this act applies to policies including mine subsidence coverage.
subsidence coverage that are issued or renewed after June 30, 1992.

A history of close working relationships with Indiana's legislators and regulatory procedures and personnel for property and casualty insurance companies has been established because of the insurance lobbyists. Because of this relationship, the insurance market for Indiana consumers has become one of the best in the nation (Insurance 1). By having one of the best insurance industries in the nation, it can also be said that Indiana has some of the best lobbyist groups in the nation.

It is no accident that Indiana has one of the best insurance industries in the nation. Such groups as the IIAI, the PIA, and the Indiana Institute work very hard to make sure that the industry stays on top of issues that not only affect the agents that they represent, but also the everyday insurance consumer. The lobbyist groups have worked very hard for years to obtain and continue to be a very important source of information for the legislators so that they would be influential in the legislative process.

The way in which the IIAI has kept involved and in touch with the legislators is through being a continual presence everyday at the state house that the legislature is in session. Roger Ronk also believes that a good organization should not only be involved with the legislators, but also the other lobbyists. The key to being a success in lobbying is being around when there are questions to be answered. Many times during the process, not only dealing with the mine subsidence bill but other insurance related bills, Roger Ronk was asked his opinion about many insurance related subjects. He was not only available, but has the reputation of being an expert in insurance issues. He also has the reputation of being a very honest lobbyist.

A good lobbyist not only talks to everyone and finds out what they are thinking, but also offers their own input in order to try to persuade others. Throughout the process, Roger Ronk was in touch with the legislators. They sought him out when they had a question. When a lobbyist is
known well enough that the legislators seek them out, they know that they have an effect on the legislative process. Trade associations such as the Independent Insurance Agents and other organizations do play an important role in making the legislative process successful. Without these groups, legislators would not have experts to call upon for guidance and would have to make more uneducated decisions on subjects that they know little about. This paper followed a bill through the process of legislation illustrating the important roles that the associations played in its passage. Good legislation will continue to be passed in Indiana through the help of interest groups as long as they continue to be both informed and willing to work with the legislators such as those described in this paper.
Works Cited


Cost Estimates for Mine Subsidence Insurance as of 7/24/91. p. 1


Grid comparing other states to Indiana prepared by Roger Ronk for the November 18, 1991 meeting with the Department of Insurance concerning mine subsidence.


I.C. 27-1-1-1


“Indiana Mine Subsidence Insurance. Without it, you could be sunk.” Brochure from the Indiana Department of Insurance. pp. 1-6.


Interviews with Roger Ronk.

Notes from Roger Ronk from the November 18, 1991 meeting at the Department of Insurance. pp.1-3.

Statistician report from November 18, 1991 meeting dealing with mine subsidence at the Department of Insurance. pp. 1-26.

COST ESTIMATES

Mine Subsidence Insurance
Rev. 7/24/91

Following are revised cost estimates, based on 7/24/91 postage rates, for an insurance agency to handle the waivers of Mine Subsidence Insurance coverage if a bill similar to HR-1670 were to become law:

Cover letter to explain increase in premium and to advise property owner of the options available to them ........................................ $1.00

Postage (additional postage for cover letter and waiver of coverage form) ........................................... 0.23

Increase cost of return envelope (from #5 to #9 to accommodate waiver form) .................. 0.05

Photocopy expense for signed waiver .................. 0.04

Postage to mail waiver form and endorsement request to the insurance company .................. 0.29

Postage to mail completed endorsement deleting coverage back to the property owner .................. 0.29

Postage to mail completed endorsement deleting coverage to the mortgagee .................. 0.29

2 #10 envelopes for mailing endorsements ................ 0.18

Labor:
- telephone inquiries, typing endorsement requests, updating file, processing endorsement, addressing envelopes, etc.
  - 20 min (average) @ 8.55/hr ................ 2.85

Cost per policy: $4.93

# policies 1500 est

$7,395.00 cost to agency to process rejection waivers.

Cost if coverage is desired: UNKNOWN

1. Bill, in addition to requiring "automatic roll-on" also requires agent & Company to "properly underwrite" the risk. Any additional cost to recoup $5.70 in commission would be prohibitive.

   (Time, mileage, photo's, tests if any)
## Comparison of States Mine Subsidence Programs

<table>
<thead>
<tr>
<th>Way in which coverage is offered</th>
<th><strong>IN</strong></th>
<th><strong>IL</strong></th>
<th><strong>KY</strong></th>
<th><strong>WV</strong></th>
<th><strong>Notes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company must provide if requested. Have had mandated coverage with sign-off and mandated offer</td>
<td>Mandatory offer with sign-off initially with mandatory offer on new policies</td>
<td>County fiscal court decides if mandatory or voluntary, Mandatory can sign off</td>
<td>Mandated with sign off for new policies (95% rejected on initial offering)</td>
<td>Many stated publicity was the key to success</td>
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<th>Level of participation</th>
<th>8%</th>
<th>Higher than 8%</th>
<th>14 - 15%</th>
<th>10%</th>
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<tr>
<th>Program administered by</th>
<th>Department of Insurance</th>
<th>IL Mine Sub. Program Ed Murphy &amp; Dick Ferro (312) 427-9638</th>
<th>KY Ins. Dept Steve Jones</th>
<th>Board of Risk Skip Morris (304) 348-2291</th>
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|-----------------|-------------------------------------------------|---------------------|----------------------------------|----------------------------------|

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<tr>
<th>Coverage provided &amp; Rates (Dwelling)</th>
<th>15 - 50,000 $15 to $22 $38 Commercial 75,000 1/1/92</th>
<th>10 - 350,000 $8 to $50</th>
<th>15,000 $15 Every 5,000 $15 Commercial $24 - 28</th>
<th>$25</th>
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<th>Claims Mgt</th>
<th>Companies Initial investigation by Co. IL Mine Subsidence Program handles from there</th>
<th>Initial investigation by Co. Dept. handles from there</th>
<th>Board of Risk Skip Morris (304) 348-2291</th>
<th>Claims are being handled by Administration Dept. (not companies)</th>
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<tr>
<th>Claims submitted</th>
<th>40 (Paid 7) 10% valid</th>
<th>400 - 500</th>
<th>Agent Experience $4 Million Annual Premium (4 claims in 15 years)</th>
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<th>Priority/Mandatory Counties determined by</th>
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<th>1% or more of land surface affected</th>
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<tr>
<th>Counties participating</th>
<th>26/26</th>
<th>33</th>
<th>56 possible participants as mandatory</th>
<th>55/55</th>
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<tr>
<th>Special features</th>
<th>30% Co. Com. Agents paid from this</th>
<th>Not part of Federal Program. Originally in Fair Plan</th>
<th>30% Co. Com. agents paid from that</th>
<th>95% Underground Mines</th>
</tr>
</thead>
</table>
Second Regular Session 107th General Assembly (1992)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

HOUSE ENROLLED ACT No. 1104

AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-7-9-3 IS AMENDED TO READ AS FOLLOWS: Sec. 3. As used in this chapter, "mine subsidence" means the collapse of inactive underground coal mines abandoned before August 3, 1977, resulting in damage to a structure. The term does not include loss caused by earthquake, landslide, volcanic eruption, or collapse of storm or sewer drains.

SECTION 2. IC 27-7-9-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS: Sec. 3.5. As used in this chapter, "peril" means the cause of a loss, such as a fire, an explosion, or a flood.

SECTION 3. IC 27-7-9-5 IS AMENDED TO READ AS FOLLOWS: Sec. 5. As used in this chapter, "structure" means any dwelling, building, or fixture permanently fixed to real property. The term does not include land, trees, crops, or other plants, nor does the term include a dwelling, building, or fixture that is owned by a public or governmental entity.

SECTION 4. IC 27-7-9-8, AS AMENDED BY P.L.150-1990, SECTION 1, IS AMENDED TO READ AS FOLLOWS: Sec. 8. (a) Coverage for damage due to mine subsidence must be available as an additional form of coverage under any insurance policy providing the type of insurance described in Class 3(a) of
IC 27-1-5-1 to directly cover one (1) or more structures located in a county identified under section 6 of this chapter. The mine subsidence coverage must be available in an amount adequate to indemnify the insured to the extent of the loss in actual cash value of the covered structure due to mine subsidence, less a deductible equal to two percent (2%) of the insured value of the structure under the policy. However, the deductible must be no less than two hundred fifty dollars ($250) and no more than five hundred dollars ($500).

(b) An insurer proposing to issue or renew a policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to cover one (1) or more structures located in a county identified under section 6 of this chapter (I) shall inform the policyholder or prospective policyholder of the availability of mine subsidence coverage under this section. If one (1) or more structures to be covered under the policy are located in one (1) of the following counties:

Clay County
Daviess County
Dubois County
Gibson County
Greene County
Knox County
Parke County
Pike County
Spencer County
Sullivan County
Vanderburgh County
Vermilion County
Vigo County
Warren County, and

(2) is not required to inform the policyholder or prospective policyholder of the availability of mine subsidence insurance coverage under this section if no structure to be covered under the policy is located in any of the counties identified in subdivision (I),

unless the policyholder or prospective policyholder inquires about the coverage.

However, an insurer that issues a policy described under this subsection is not required to inform the policyholder of the availability of mine subsidence insurance under this chapter more than one (1) time. An insurer that provides information under this subsection before issuing a policy to the person is not required to provide information under this subsection to the person again after issuing the policy to the person.
shall inform the policyholder or prospective policyholder of the availability of mine subsidence coverage under this subsection when a policy described in this subsection is issued and each time a policy described in this subsection is renewed. However, an insurer is not required to inform a policyholder or prospective policyholder of the availability of mine subsidence coverage if:

(1) the issuance or renewal of the policy will take place after June 30, 1994; or
(2) the policy to be renewed already includes mine subsidence coverage.

(c) An insurer proposing to issue or renew a policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to cover one (1) or more structures located in a county identified under section 6 of this chapter:

(1) shall inform the policyholder or prospective policyholder of the amount of the premium for mine subsidence coverage under this section if one (1) or more structures to be covered under the policy are located in a county identified in subsection (b)(1); and
(2) is not required to inform the policyholder or prospective policyholder of the amount of the premium for mine subsidence coverage under this section if no structure to be covered under the policy is located in any of the counties identified in subsection (b)(1), unless the policyholder or prospective policyholder inquires about the coverage.

However, after providing information to a person on the availability of mine subsidence coverage under subsection (b)(1) and on the amount of the premium for that coverage under this subsection, an insurer is not required to inform the person of the amount of the premium for mine subsidence coverage again unless the person purchases that coverage from the insurer.

(d) (e) When an insurer informs a policyholder or prospective policyholder of the amount of the premium for the mine subsidence coverage that is available as an additional form of coverage under a policy as required by subsection (a), the premium for the mine subsidence coverage must be stated separately from the premium for the other coverage provided by the policy. The amount of the premium for mine subsidence coverage provided by an insurer under this section must be set according to the premium level set by the commissioner under section 10 of this chapter.

(e) (d) Except as provided in subsection (e), (f), an insurance policy providing the type of insurance described in Class 3(a) of
IC 27-1-5-1 to directly cover one (1) or more structures located in a county identified under section 6 of this chapter must include the mine subsidence coverage provided for under subsection (a) if the prospective insured (before issuance of the policy) or the insured (before renewal of the policy) indicates that the coverage is to be included in the policy.

(f) (e) An insurer is not required to provide mine subsidence coverage under subsection (a) under any insurance policy in an amount exceeding the amount that is reimbursable from the fund under section 9(a)(4) of this chapter.

(g) (f) An insurer may must decline to make the mine subsidence coverage provided for under subsection (a) available to cover a structure evidencing unrepaired mine subsidence damage, until necessary repairs are made. An insurer may also decline to make the mine subsidence coverage available under an insurance policy if the insurer has:

1. declined to issue the policy;
2. declined to renew the policy; or
3. cancelled all coverage under the policy for underwriting reasons unrelated to mine subsidence.

SECTION 5. IC 27-7-9-8.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS: Sec. 8.4. If coverage for damage due to mine subsidence is added under this chapter as an additional form of coverage to a policy providing the coverage described in Class 3(a) of IC 27-1-5-1, the mine subsidence coverage of the policy must apply to structures in the same manner as coverage for other perils under the policy.

SECTION 6. IC 27-7-9-8.5, AS ADDED BY P.L.150-1990, SECTION 2, IS AMENDED TO READ AS FOLLOWS: Sec. 8.5. (a) The amount payable through mine subsidence insurance provided under this chapter for all damage caused by one (1) mine subsidence occurrence is limited to the amount of insurance that:

1. is in force with respect to the structure or structures damaged in the occurrence; and
2. is reinsured under section 9 of this chapter;

at the time when the damage to the structure or structures first becomes reasonably observable, occurs.

(b) For the purposes of this section, all damage that is caused by:

1. a single mine subsidence event; or
2. two (2) or more mine subsidence events that are continuous;
shall be considered as having been caused by one (1) mine subsidence occurrence.

(c) Neither an insurer, an agent of an insurer, nor an employee of an insurer is obligated to investigate for mine subsidence damage that may have occurred before the issuance or renewal of a policy including mine subsidence coverage under this chapter, unless specifically informed of such damage by the insured or prospective insured.

(d) Neither an insurer, an agent of an insurer, nor an employee of an insurer is liable for mine subsidence damage that occurs before the issuance of a policy including mine subsidence coverage under this chapter.

SECTION 7. IC 27-7-9-9, AS AMENDED BY P.L.150-1990, SECTION 3, IS AMENDED TO READ AS FOLLOWS: Sec. 9. (a) An insurer making the type of insurance described in Class 3(a) of IC 27-1-5-1 shall enter into a reinsurance agreement with the commissioner. The reinsurance agreement must include the following terms:

(1) The insurer agrees to cede to the commissioner one hundred percent (100%) of any mine subsidence coverage issued under this chapter, subject to a maximum limit of seventy-five thousand dollars ($75,000) per structure insured.

(2) The insurer shall collect the premiums for mine subsidence insurance, may retain a ceding commission in an amount set by the commissioner, and shall remit the remainder of the premiums to the commissioner for deposit in the mine subsidence insurance fund.

(3) The insurer, in consideration of the ceding commission, shall:

(A) undertake the adjustment of losses under the mine subsidence coverage issued under this chapter by the insurer, with technical assistance provided under section 9.5 of this chapter; and

(B) pay the taxes and absorb all other expenses necessarily incurred by the insurer in the sale of policies and the administration of the mine subsidence insurance program under this chapter.

(4) The commissioner shall reimburse the insurer from the mine subsidence insurance fund for all amounts paid to policyholders for mine subsidence insurance claims.

(5) The insurer is not required to pay a claim for any mine subsidence loss insured under this chapter if the amount
available in the mine subsidence insurance fund is insufficient to reimburse the insurer for the claim.

(b) The determination of the commissioner as to the amount of the ceding commission that an insurer may retain under subsection (a)(2) must be based on a consideration of the insurer's reasonable administrative costs (including agents' commissions).

SECTION 8. IC 27-7-9-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS: Sec. 9.5.

(a) The commissioner shall provide insurers with assistance from one (1) or more individuals with technical expertise in mine subsidence for the purpose of assisting with the adjusting of claims under coverage issued under this chapter. To comply with this section, the commissioner may:

(1) expand the staff of the department of insurance;

or

(2) enter into contracts providing for the services of persons with the necessary technical expertise to provide assistance to insurers in the determination of subsidence events.

(b) The adjustment of a claim against a policy that includes mine subsidence coverage under this chapter is the sole responsibility of the insurer until the insurer makes a preliminary determination that the loss may involve mine subsidence. Upon such a determination, those persons retained by the commissioner as set out in subsection (a) of this section shall assist the commissioner and insurer in determining the existence of a mine subsidence event and the costs therein shall be paid from the fund established by section 7 of this chapter.

SECTION 9. IC 27-7-9-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS: Sec. 17.

In order to establish guidelines and procedures necessary to implement this chapter, the commissioner shall have authority to adopt rules pursuant to IC 4-22-2.

SECTION 10. (a) IC 27-7-9-8.5, as amended by this act, applies to policies including mine subsidence coverage that are issued or renewed after June 30, 1992.

(b) This SECTION expires July 1, 1993.

SECTION 11. This act takes effect as follows:

SECTIONS 1 through 3 .......... July 1, 1992
SECTION 4 ................. September 1, 1992
SECTIONS 5 through 10 ......... July 1, 1992
President of Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: ________________________________

Governor of the State of Indiana