LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: CS/HB 586 **50th Legislature, 1st Session, 2011**

Tracking Number: .186433.1

Short Title: Premium Tax Offset Act

Sponsor(s): Representative Mimi Stewart

Analyst: Craig J. Johnson **Date: March 10, 2011**

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 586

Bill Summary:

CS/HB 586:

- creates the *Premium Tax Offset Act*;
- authorizes the state to sell premium tax offset certificates (certificates) to investors who can use them as an offset on their future insurance premium taxes and health insurance surtaxes; and
- requires the proceeds from the sale of these certificates to be deposited into the General Fund.

Among its provisions, the bill:

- authorizes the Board of Finance (BOF) to:
    - ➢ issue the certificates to be sold to companies providing insurance services in New Mexico;
    - ➢ determine the full offset amount of the certificates not to exceed $400 million; and
    - ➢ hire a manager for the certificate program that, at a minimum, has:
        - ✓ experience in structuring, marketing, and pre-selling insurance premium tax credit sale obligations, including marketing and selling purchase commitment agreements in an amount not less than $400 million of premium tax credits or offset certificates under certain conditions;
        - ✓ experience during the previous calendar year with underwriting and marketing government securities transactions in New Mexico;
        - ✓ control of over $800 million in equity capital; and
        - ✓ experience during the previous calendar year in managing a minimum of 50 financing transactions nationwide, each with a value in excess of $50.0 million;

- states that the certificates:

  - will be irrevocable;
  - have a maturity date of 10 years from the date the certificate is eligible to be used; and
  - can be transferred;

- requires the offset against premium taxes to be equal to 10 percent of the face value of the certificate for 10 consecutive years;
- allows the investor to take the tax offset each year or use them to reduce the investor's quarterly payment;
- amends the *Insurance Code* to allow for the reduction in premium taxes owed by the investor; and
- provides that the distribution of premium taxes to the Law Enforcement Protection Fund and the Fire Protection Fund to not be reduced by any offsets but be based upon the total value of premium taxes as if the offsets were paid in cash.

Fiscal Impact:

CS/HB 586 provides the General Fund with a one-time injection of approximately $335 million at a cost of up to $40.0 million in General Fund revenue each year ($400 million total). If $400 million in certificates is sold, then the General Fund would see a reduction of $40.0 million each year for the next 10 years.

The bill analysis from the Department of Finance and Administration (DFA) states, "The transaction costs the state an estimated $59 million. The Board of Finance sees no compelling reason why the state should pay an estimated $59 million to the manager and the insurance companies."

The Fiscal Impact Report from the Legislative Finance Committee (LFC) estimates the amount that will be transferred to the General Fund to be $335 million. The LFC notes that "The LFC has concerns when earmarking reduces the ability of the legislature to establish spending priorities. This is a somewhat extreme example of earmarking."

Substantive Issues:

CS/HB 586 requires that the selected manager of the transaction must have:

- experience in structuring, marketing, and pre-selling insurance premium tax credit sale obligations, including marketing and selling purchase agreements of at least $400 million;
- experience underwriting government securities transactions in New Mexico during the previous calendar year;
- control over $800 million in equity capital; and
- experience managing at least 50 financing transactions nationwide, each with a value in excess of $50.0 million, during the previous calendar year.

The bill analysis from DFA notes, "The transaction has been proposed to the state by Wells Fargo/Proteus Capital Holdings, and it is inferred that those firms hope to act as manager for the state."

<u>Background</u>:

- Laws 2005, Chapter 273, increased the Educational Retirement Board (ERB) employer contribution rate 0.75 percent annually from FY 06 through FY 12 to a final 13.9 percent.

- Laws 2009, Chapter 126, initiated a two-year 1.5 percent contributions shift from both the ERB and the *Public Employees Retirement Act* (PERA) employer to the employee as a solvency measure to produce a balanced state budget.

- Then, Laws 2010, Chapter 67 (SB 91), delayed the 0.75 percent ERB employer increase scheduled for FY 11 to FY 12 and the final 0.75 percent employer increase to FY 13. Thus, the culmination of this legislation, if left intact, produces a 2.25 percent increase in the employer ERB contribution and a 1.5 percent increase in the employer PERA contribution effective July 1, 2011.

- The market value of the Educational Retirement Fund as of September 30, 2010 was $8.8 billion, which was up from a low of $5.97 billion in February 2009.

- As of June 30, 2010 the actuarial value of assets of the Educational Retirement Fund was $9.43 billion and the UAAL was $4.92 billion.

- The funded ration was 65.7 percent at June 30, 2010.

<u>Related Bills</u>:

HB 57 *Public Employees Returning to Work*
HB 129a *Returning Educational Retiree Payments*
HB 133 *Delay Educational Retirement Contributions*
HB 142 *Public Retirees Returning to Work*
HB 251 *Amend Certain Retirement Acts*
HB 272 *Public Employee & Education Retirement Acts*
SB 87 *Public Employee Retirement Contribution*
SB 268 *Public Employee Retirement Plan Changes*