F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 01/24/13
SPONSOR SPAC **LAST UPDATED** 02/26/13 **HB**

SHORT TITLE Large Employers In Health Insurance Exchanges **SB** 48/SPACS

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total SPAC Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	20.0	N/A	Nonrecurring	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission (PRC)
Human Services Department (HSD)

SUMMARY

Synopsis of Bill

The Senate Public Affairs Committee substitute for Senate Bill 48 (SB 48) allows for “Large Employer” participation in any state Health Insurance Exchange. This would be allowed as of January 1, 2017. The bill defines “large employer” as having no less than 50 employees. In determining the number of eligible employees the spouse and dependent(s) can be counted as a separate employee at the discretion of the employer.

SB 48 adds a requirement for the Superintendent of Insurance to conduct a study of “premium growth in the large group market both in and outside of the state health insurance exchange” to determine whether there has been “excessive” premium growth in the Exchange, and to report the results of this study by November 2015 to the Legislative Finance Committee (LFC) and the Legislative Health and Human Services Committee. The provisions of SB 48 (namely that large employers can participate in the Exchange beginning in 2017) would go into effect if and when the Superintendent certifies, as a result of this study, that premium rates for large groups in the Exchange have not risen excessively compared to the premium rates for large groups outside of the Exchange.

SB 48 requires the Superintendent of Insurance to conduct a study of premium growth and comparative premium rates in the large group market both in and outside of the Health Insurance Exchange in order.

FISCAL IMPLICATIONS

The Public Regulation Commission (PRC) indicates that the Committee Substitute does not provide funding for this study or describe where such funding would come from. The PRC provided a rough estimate of the cost of this study to be $20,000.

SIGNIFICANT ISSUES

The PRC reports that since the Affordable Care Act (ACA) does not allow states to admit large employers into their health insurance exchanges until 2017, there will not be any premium rates for large groups in the Exchange available to study until ***after*** 2017.

The Human Services Department (HSD) raised the following significant issues with the SPAC substitute for SB 48:

1. Section 1 and Section 2 are largely duplicative and one should be amended out.
2. The committee sub requires a "premium growth" study of the large employer market both in and out of the health insurance exchange, but the bill is not effective until the Superintendent of Insurance completes the study and determines that rates in the exchange have <u>not</u> risen excessively in comparison to large group rates outside the exchange. This is mutually exclusive. The Superintendent has no authority to conduct a study with the "contingent effective date" in place (which requires a study for the act is effective).
3. There is no appropriation for a study of the large group market by Superintendant of Insurance.
4. "Excessive premium growth" is not defined and is essentially a standard-less legislative mandate.
5. The contingent effective date seems to violate of Article IV, Section 23 of the N.M. State Constitution.
6. The contingent effective date also requires a certification by an executive branch officer to trigger the effectiveness of legislation and thus would be an unconstitutional delegation of legislative power to the executive.

The HSD reports the bill allows for the establishment of state based exchanges to provide affordable health insurance for the individual, small employer, medium and large employer markets. The ACA defines small employer as less than 50 employees, medium 50-100, and large employers as more than 100 employees.

The ACA does not impose a requirement that small, medium or large employers provide health insurance for its employees. However, the federal government will provide for subsidized premium support in the individual and small employer markets. Large employers do not currently have tax credit supports like the individual or small group market.

The HSD notes that SB 48 would allow "large employers" defined as those with 50+ full time employees (as the ACA describes both the medium and large employer market) to obtain insurance coverage on the exchange. It is anticipated that because of the larger risk pools that large employers may be able to find lower cost coverage for their employees. Yet, if they obtained coverage through the exchange, "rating rules," essential benefit minimums, and limits on deductibles which apply to other products in the exchange would apply to the large employer coverage.

SB 48 provides that large employers would be determined to be "qualified" employers for purposes of an exchange. (page 1, line 19 and page 3, line 2). It is unclear what significance of the legislative determination of "qualified" would have on the coverage: whether it would simply allow large employers to obtain insurance on the exchange; or whether they would then be eligible for some form of tax credit premium assistance.

Currently, according to the Medical Expenditure Panel Survey, 98 percent of large employers already offer insurance to their employees. Thus, this is the segment least affected by the ACA. However, a large employer who does not offer employer based health care and has at least one full time employee who obtains subsidized health insurance on the exchange would be assessed a penalty of $2000 per full time employee, excluding the first 30 employees.

OTHER SUBSTANTIVE ISSUES

The HSD states that SB 48 allows the employer to count spouses and dependents as separate employees for purposes of determining the 50+ employee threshold for large employers. Since large employers would not receive a subsidy or tax credit for participating in an exchange, the incentive would be to decrease the number of employees to below the 50 employee threshold instead of increasing the number.

The Internal Revenue Service (IRS) has released two notices October 5, 2012. These notices are 2012-58 and 2012-59 which asks for input for determining what defines a full-time employee under the ACA. The results of this notice have not been released.

It is not known if a spouse or dependent of the full-time employee can be counted as an "employee". It is also not known what is meant as these determinations can be made at the discretion of the employer. Could there be standardization for all large employers or would each employer invoke its own rule in defining an employee?

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Large employers in New Mexico with greater than 50 employees may not be able to participate in a Health Insurance Exchange.

TT/svb:blm