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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/13  
 SPONSOR SPAC LAST UPDATED 03/06/13 HB \_\_\_\_\_  
 SHORT TITLE New Mexico Health Insurance Exchange Act SB 589/SPACS  
 ANALYST Geisler/Trowbridge

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY13  | FY14  | FY15         | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected                                  |
|--------------|-------|-------|--------------|-------------------|---------------------------|--|
| <b>Total</b> | \$0.0 | \$0.0 | *Significant | *Significant      | N/A                       | Federal Funds, General Fund, Other State Funds |

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications

Relates to HB 168, SB 221, SB 48, HB 563

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)  
 Department of Health (DOH)  
 Human Services Department (HSD)  
 Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

The Senate Public Affairs Committee substitute for Senate Bill 589 (SB 589) proposes to enact the New Mexico Health Insurance Exchange Act to implement requirements of the federal Affordable Care Act (ACA) for the State to operate a health insurance exchange, *in lieu* of having the federal government operate an insurance exchange on behalf of the State. The bill would create a new entity referred to as the New Mexico Health Insurance Exchange, as well as a board of directors, including members appointed by the governor and members of the Legislature.

The bill provides definitions for board, exchange, Native American, navigator, and superintendent.

The definition of “exchange” is defined as “the New Mexico health insurance exchange, composed of an exchange for the individual market and a small business exchange.” The exchange shall not duplicate, impair, enhance, supplant, infringe upon or replace, in whole or in any part, the powers, duties or authority of the superintendent.

SB 589 creates the Board of the Health Insurance Exchange of 13 voting directors, and specifically:

- the governor’s appointments—6;
- Legislative appointments—6, 3 from the Speaker and 3 from the President pro tem;
- The Superintendent of Insurance or designee

In addition, the directors shall be:

- A health care provider;
- The Secretary of Human Services or designee;
- A representative of a statewide health care planning entity;
- A representative of a nonprofit corporation;
- Three from [insurance] carriers; and
- Five from health care consumers, consumer advocates, officers of small employers, and employees of small employers.

Of the initial appointments, four shall be from directors appointed from the New Mexico Health Insurance Alliance Board and four from the directors of the New Mexico Medical Insurance Pool Board. The Board shall reflect the state’s Native American population, ethnic diversity, cultural diversity and geographic diversity. Meetings must operate consistent with the Governmental Conduct Act, Inspection of Public Records Act, Financial Disclosure Act and Open Meetings Act.

A Native American Liaison will serve as a contact person between the Exchange and the Native Americans in the State.

A preliminary plan of operation will be created within 60 days, and a final plan of operation be developed within six months.

## **FISCAL IMPLICATIONS**

The Human Services Department (HSD) reports “The implementation of the health insurance exchange is likely to have a significant fiscal impact on the state, with additional federal revenue coming to New Mexico in the form of tax credits to subsidize the cost of health insurance for more than 70,000 exchange clients, as well as increased revenues from state premium taxes on the insurance plans offered by the exchange.

As reported in the consensus revenue estimates, the FY14 insurance premium tax estimate contains the first fiscal impacts from the expansion of Medicaid and creation of the health insurance exchange under the ACA. Note that premiums taxed are paid quarterly and the impacts will only be reflected in the last quarterly payment for FY14; much larger impacts are anticipated

for subsequent fiscal years. Analysts have been careful to include the impacts of existing law only.

Significant amounts of premium tax revenue are currently diverted to the New Mexico Medical Insurance Pool (NMMIP), which provides access to health insurance coverage to residents of New Mexico who are denied health insurance and considered uninsurable. For FY 13, NMMIP has assessed health insurance companies \$117 million to substantially fund the pool. Insurance carriers in turn are allowed a roughly 55 percent credit on assessments which are claimed against premium tax liability.

This scheme will change under ACA, as the bulk of NMMIP pool participants should therefore receive insurance through the exchange, if not as an adult newly eligible for Medicaid. However, not all NMMIP participants are eligible to participate. Undocumented residents, currently estimated to be around 20 percent of the pool, will still participate in NMMIP. This leaves 80 percent of the pool eligible to enter the exchange on January 1, 2014. The consensus revenue estimate assumes about 50 percent of the pool transitions to the exchange. This transfer of clients is currently estimated to save the state between \$10 million and \$20 million.

Also of note, the health insurance exchange as created by SB 589 is a quasi-governmental entity that is exempt from the legislative appropriation and budgeting process, state procurement code, and the State Personnel Act. The exchange is likely to administer, accrue and account for substantial revenues and expenditures which will occur outside of the oversight of the executive branch and the Legislature. Although the “quasi-governmental” exchange model proposed in SB 589 is being considered by other states, other states have also decided to operate their exchanges within current executive branch agencies or have established independent state agencies, presumably with greater oversight and accountability by the Legislature and the public.”

The HSD also indicates there may be an impact to the ASPEN interface programming that cannot be quantified with the information given at this time and IT impact cannot be determined until final requirements are established.

## **SIGNIFICANT ISSUES**

The HSD provided the following:

- Initial appointment to the board of members from the New Mexico Medical Insurance Pool (Pool) presents problems from an accountability standpoint. Members of the Pool are appointed by the Superintendent of Insurance, who is currently an unelected, appointed public official. These members have little to no real accountability to the general public and may not act in the best interests of the public, whereas gubernatorial or legislative appointees are held accountable to elected officials, with a more direct link to serving the best interests of the public.
- This legislation also requires that a dispute resolution process be established within the HIX. The process for doing so, like so many other exchange related items, has not been finalized by the federal government. The state may have the option to opt for an entirely federally run dispute resolution process in order to save funds generated by the exchange for operation of the exchange, while helping to streamline the dispute resolution process. This provision is not needed in the legislation.

- Section 10 requires cooperation between the Exchange and the HSD/MAD to facilitate coverage transitions between the Exchange and Medicaid/CHIP. Language at the end of this paragraph referring to “any other public health coverage program” is overly broad. The HSD/MAD does not have the capacity, resources or information available to transition people between other public health coverage programs outside of Medicaid and CHIP, such as programs that are run by the Department of Health, Veteran’s Affairs, counties, municipalities, or tribes. The reference to “any other public health coverage program” should be stricken.
- Some changes have occurred in the SPAC substitute of the legislation. The plan of operation is now split into two sections to allow the board time to comply with developing the plan under tight federal timelines. Many of the definitions have been stripped out creating more of a framework plan for the implementation of a state-base health insurance exchange.

The Department of Health (DOH) reports that ACA requires all individuals to have health insurance. SB 589 implements ACA requirements for states to offer health insurance exchanges for individuals and businesses that currently do not have or do not offer health insurance. The required preliminary and final plans of operation will hopefully address the expected multitude of issues related to the successful operation of the New Mexico Health Insurance Exchange.

The Attorney General’s Office indicates the bill creates a state health insurance exchange that meets the requirements of the ACA. Without legislation properly establishing an exchange, the federal government will operate an exchange in New Mexico.

## **RELATIONSHIP**

SB 589 relates to:

- HB 168, which would create the New Mexico Health Insurance Exchange;
- HB 563, which would create the New Mexico Health Insurance Exchange;
- SB 221, which would create the New Mexico Health Insurance Exchange; and
- SB 48, which would enable the participation of large employers in a health insurance exchange.

## **TECHNICAL ISSUES**

The Public Regulation Commission advises that the phrase “DISPUTE RESOLUTION” should be struck from the title of Section 7 since it no longer applies.

## **DISPARITIES ISSUES**

The DOH observes that one of five New Mexicans is without health insurance. The 2012 State Health Improvement Plan discusses higher rates of individuals in New Mexico without health insurance, relative to the U.S. (New Mexico 21 percent, U.S. 16 percent).

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If SB 589 is not enacted and the New Mexico Health Insurance Exchange Act will not be created by legislation; however, The HSD states that New Mexico will continue work on the establishment of a state-based exchange through the Executive.

GG:TT/svb