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

ORIGINAL DATE 1/24/19
SPONSOR Trujillo, J. **LAST UPDATED** ________ **HB** 162

SHORT TITLE Insurance Premium Tax Provisions **SB** ________

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
	See Fiscal Implications				Recurring	General Fund
	See Fiscal Implications				Recurring	Law Enforcement Protection Fund
	See Fiscal Implications				Recurring	Fire Protection Fund

Parenthesis ( ) indicate revenue decreases

***Under current law, as of January 1, 2020, virtually no revenue will flow into the law enforcement protection fund. However, this was not reflected in the December 2018 consensus revenue estimate, against which FIRs are scored (see Fiscal Implications).**

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$56.4	$108.8	$165.2	Recurring	Administrative Hearings Office Operating Budget

Parenthesis ( ) indicate expenditure decreases

Relates to: HB 154

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Hearings Office (AHO)
Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Bill

House Bill 162 applies the provisions of the Tax Administration Act (TAA) to the Insurance Premium Tax Act, bringing the Taxation and Revenue Department's (TRD) administration of insurance premium taxes (beginning January 1, 2020 under existing statute) in line with how the department administers the myriad other taxes for the state, including audits, penalties, statute of limitations, and taxpayer rights. It repeals two existing penalty provisions in favor of the universal penalties already contained within the TAA.

Corrects Issue with Existing Statute: Chapter 57 of Laws 2018 (HB 223)

> Legislation enacted in 2018 transferred collection of insurance premium taxes from the Office of Superintendent of Insurance (OSI) to TRD effective January 1, 2020. However, it did not place the new statutory provisions within the TAA, and it left out specific distribution language to transfer tax revenues collected by TRD that are currently transferred to the law enforcement fund and the fire protection fund.
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> Existing statute as a result of HB 223 would nearly eliminate distributions to the law enforcement protection fund (LEPF) effective January 1, 2020. However, this bill corrects that issue, which appears to have been an error, and keeps the distributions to that fund at the existing level.
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> The fire protection fund does not appear to have the same issue. While there is no specific distribution language under current statute in the appropriate section of the TAA, statute does direct TRD to pay daily all money it receives for premium taxes to the state treasurer and then directs the treasurer to transfer the appropriate amounts to the fire protection fund and the general fund. This bill contains clarifying language but does not appear needed to correct any legal prohibition against transferring the appropriate money to the fire protection fund.

Finally, the bill requires the insurance superintendent to provide to TRD information related to an insurer or plan necessary for TRD to administer the taxes.

The provision to repeal the penalty provisions has no effective date and is assumed to be effective 90 days after this session ends. These penalties would not have gone into effect until January 1, 2020. The remainder of the bill is effective January 1, 2020.

FISCAL IMPLICATIONS

The LEPF is currently funded from 10 percent of all money received for fees, licenses, penalties, and taxes from life, general casualty, and title insurance business pursuant to the New Mexico Insurance Code. However, under current law, as of January 1, 2020, virtually no revenue will flow into the law enforcement protection fund. HB 223 removed "taxes" from the distribution to the fund of 10 percent "of all the money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business…" (Section 29-13-3 NMSA 1978).

This change, effective January 1, 2020, leaves only the distribution of 10 percent of fees, licenses, and penalties, which is likely to be little more than 1 percent of current distributions to the fund. However, this was not reflected in the December 2018 consensus revenue estimate because the fiscal analysis for HB 223 did not reflect this change, but the economists involved in the revenue forecasts recently became aware of this issue. Since FIRs are scored against the most recent revenue estimate, this is temporarily scored assuming existing distributions continue, but the scoring will be updated when the mid-session revenue update is released.

Scored against the December 2018 revenue estimate, this bill would have no impact, but in actuality it would. Annually, about $5 million is distributed from the LEPF, and the remainder reverts to the general fund. Without this bill, that additional $5 million would go to the general fund. Therefore, scored against statute (not the revenue estimate), this bill would decrease general fund revenues by $5 million and increase LEPF revenues by the same amount.

SIGNIFICANT ISSUES

Chapter 57, Laws 2018 (HB 223) transferred the collection of insurance premium tax revenues from the Office of Superintendent of Insurance (OSI) to TRD effective January 1, 2020. The delayed effective date gave both agencies and other experts more time to review the legislation for potential issues before the transfer occurs. This bill was proposed by TRD to correct issues they found with the existing legislation, and the bill was endorsed by the Revenue Stabilization and Tax Policy Committee.

One significant concern relates to the poor historical audit performance of OSI, which resulted in the need for a special audit, which found taxpayers had underpaid premium taxes by tens of millions of dollars over more than a decade. Under existing statute, TRD will not have audit authority, only a revenue processing function. Therefore, the agency would be unable to verify the accuracy of the payments and unable to address the shortcomings identified in the special audit. OSI would remain responsible for any examination of the reported taxes and payments, but OSI is not required to share that information with TRD. This bill gives TRD audit authority.

Another concern is the lack of any statute of limitations in existing statute for premium taxes. The TAA has specific limitations, giving the state and taxpayers more certainty about potential liabilities; this bill, by bringing premium taxes into the TAA, would provide that same certainty for these revenues.

Current statute does not provide for independent hearings, and this bill would provide taxpayers with the right to appeal to the Administrative Hearings Office, bringing it into line with the rights of other taxpayers.

Existing penalty provisions are not tied to the related liabilities, and this can result in assessed penalties far lower than for other taxpayers, minimizing the incentive to file correctly. This bill applies the same penalty provisions for all other taxes in the TAA.

Currently, the "taxpayer bill of rights" does not apply to these taxpayers, but this bill would apply these standards to premium taxes as the TAA does for all other taxes.

ADMINISTRATIVE IMPLICATIONS

The Administrative Hearings Office (AHO) provided the following administrative impact information.

Because the bill places the insurance premium tax under the provisions of the TAA, an insurance company will also acquire the ability to protest under Section 7-1-24 NMSA 1978 of the TAA, which will consequently expand the hearings over which AHO has jurisdiction under Section 7-1B-8 NMSA 1978 of the Administrative Hearing Office Act.

Accordingly, there is a reasonable likelihood that AHO may experience an increase in tax protests which may require a proportionate increase in funding in order to provide for the prompt disposition of protests. Although perhaps infrequent, these cases are likely to be fairly technical and complex involving well-represented parties and vigorous litigation. Thus, even if there is only one hearing a month, we anticipate such complex cases will require extensive hearing time and the full attention of a tax administrative law judge to adjudicate in an efficient and competent manner.

Projected cost for one ADM LAW JDG/ADJCTR-A

Six month salary Is shown below:

Salary and Benefits	48,028.57
Car/Gas	1,350.00
Mandatory Training	250
Indirect (office space etc.)	3,400.00
Travel	750
Recurring Expenses	53,778.57
(Non-recurring Expense)	
Initial Office set-up	2,600.00
Grand Total	56,378.57

Projected Cost for one ADM LAW JDG/ADJCTR-A

Twelve month salary Is shown below:

Salary and Benefits	96,354.99
SHARE - HCM Assessment	385.00
Car/Gas	2,700.00
Insurance	18.75
State Bar Dues	500.00
Mandatory Training	500.00
Indirect (office space etc.)	6,800.00
Travel	1,500.00
Recurring Expenses	108,758.74

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 154, which makes the law enforcement protection fund non-reverting and increases distributions from the fund (would not be possible without enactment of this bill or similar legislation reestablishing current distributions to that fund).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Distributions to the law enforcement protection fund will virtually cease on January 1, 2020, and TRD will be forced to collect insurance premium taxes without any authority to audit or properly administer the tax.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

JC/sb