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FISCAL IMPACT REPORT

ORIGINAL DATE 03/16/11

SPONSOR Espinoza LAST UPDATED _____ HB 560

SHORT TITLE Health Care Tax Credit SB _____

ANALYST Esquibel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$120,000.0)	(\$120,000.0- \$240,000.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Human Services Department (HSD)

Responses Not Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 560 proposes two new sections of the Income Tax Act. It provides for a health care tax credit for New Mexico residents and employers who file income tax returns and purchase health care insurance, similar to the tax credits provided in Sections 1401 and 1421 of the federal Patient Protection and Affordable Care Act (ACA). It includes provisions that prohibit individuals from paying penalties or fines for making direct payment for lawful health care services and exempts providers from penalties and fines for accepting direct payment from a person for lawful health care services. Additionally, it exempts residents from a mandate to purchase health insurance pursuant to any law enacted by the United States Congress.

FISCAL IMPLICATIONS

The Public Regulation Commission (PRC) indicates HB560 would have an estimated cost of \$120 million for FY12. A range of \$120 to \$240 million is the projected cost for FY13. To estimate the range, PRC used 2008 distribution percentages of population to estimate the

individual insurance premiums to be reimbursed at close to 100%; and 2009 New Mexico Group premiums collected to estimate the business and nonprofit premiums to be reimbursed at 50% and 35% respectively. The PRC used varying percentages of the population percentages to estimate the actual participation rates and assumed the \$2 billion of Medicaid funds would still be received under the plan. The 2008 average cost of medical care of \$4500 per person was used as the premium cost for those filing for the refund.

SIGNIFICANT ISSUES

The Human Services Department indicates there are significant issues associated with HB560 related to implementation of federal ACA provisions. The effective date of the provisions for HB560 is July 1, 2011. The premium credits for individuals established by the ACA begin in 2014. Additionally, it is not clear if the adjusted gross income structure to determine eligibility for individual credits in HB560 is the same methodology as the modified adjusted gross income required by the ACA. Also, the ACA does not provide credits to individuals with income below 133% FPL as those individuals are intended to obtain coverage through Medicaid. HB560 allows for a credit for individuals with income below 133%.

The credit amounts for small businesses in HB560 differ from those established by the ACA. The ACA establishes two phases of tax credits for small businesses. Phase 1, beginning in 2010 through 2013, allows a maximum credit of 35% (25% for tax-exempt entities) of premium payments. Phase 2, beginning in 2014 and lasting for the first two years in which the employer offers coverage through a state Health Insurance Exchange, allows for credits as high as 50%. HB560 provides a 50% tax credit to small businesses and a 35% tax credit for tax-exempt businesses. It is not clear how the differences in the credit structures and corresponding timelines between HB560 and the ACA are to be resolved or whether HB560 is intended to supersede the provisions of the ACA.

Additionally, Section 2 of HB560 provides a legal framework to oppose the individual mandate to purchase health care under the ACA. HB560 challenges the individual mandate to purchase health insurance pursuant to “any law enacted by the United States Congress that exceeds the Congress’ authority to regulate commerce” as provided in Article 1, Section 8 of the United States Constitution.

Other key decisions regarding implementation of the ACA, such as how to structure and operate the state’s health insurance exchange, will be impacted by not enforcing an individual mandate to purchase health insurance coverage.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB560 relates to:

- HB33 (New Mexico Health Insurance Exchange Act)
- HB245 (Health Insurance Purchasing Cooperative)
- HB257 (LFC Perform FIR on Health Care Reform Design)
- HB323 (Interstate Health Care Freedom Compact)
- SB5 (Health Security Act)
- SB38 (New Mexico Health Insurance Exchange Act)
- SB89 (Private Health Insurance Purchasing Co-Op Act)

- SB370 (Enact NM Health Insurance Exchange Act) and
- SJR5 (State Health Care System, CA)

OTHER SUBSTANTIVE ISSUES

The Human Services Department indicates various legal challenges have been brought against the ACA related to the individual mandate. Final judicial resolution of these challenges is likely to take years. Whether states can legally defend individuals from compliance with a federal mandate remains a legal matter.

RAE/bym