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FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Muñoz	**ORIGINAL DATE**	3/10/23
SHORT TITLE	Health Premium Tax for Law Enforcement	**BILL NUMBER**	Senate Bill 491
		ANALYST	I. Torres

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	($22,500)	($21,800)	($22,200)	($22,600)	Recurring	General Fund
	$22,500	$21,800	$22,200	$22,600	Recurring	Law Enforcement Protection Fund

Parenthesis ( ) indicate revenue decreases
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 491

Senate Bill 491 (SB491) earmarks 10 percent of health insurance premium tax revenue for the law enforcement protection fund.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Currently, the law enforcement protection fund receives revenues from an earmark on certain insurance premium tax revenues. SB491 adds the largest insurance premium tax revenue source to that list, estimated to reduce the general fund by over $20 million a year and benefit the law enforcement protection fund. The December 2022 consensus revenue estimate was used to determine the fiscal impacts.

The earmark contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance shall not revert to the general fund. LFC has concerns because earmarking reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

The LEPF provides funding to local law enforcement agencies for training, equipment, and retention payments, as well as additional funds for state police operations and the Law Enforcement Academy (NMLEA). The fund is set to receive 10 percent of insurance tax revenue from life, general casualty, and title insurance business. The Office of Superintendent of Insurance (OSI) managed the insurance premium tax program (which distributes insurance tax funds) until 2020, when administration of the program transferred to the Taxation and Revenue Department (TRD). Since then, TRD has updated the tax returns for the program, which allows them to appropriately manage the program.

These changes have created uncertainty in revenue to the LEPF, which comes after the Legislature substantially increased distributions from the fund based on potentially incorrect prior-year revenues. Between FY11 and FY20, the fund saw a 37 percent increase in revenue, with an average year-over-year increase of 5 percent and $19.9 million distributed to the fund in FY20. Using projections based on these past revenues and anticipated continued increases, the Legislature increased distributions from the fund during the 2020 and 2022 legislative sessions, which resulted in an additional distribution of at least $4.8 million in FY23 and an anticipated increase of $10.1 million more in FY24, with substantial projected unused revenue ($3.9 million in FY24 and $5.4 million in FY25) reverting to the law enforcement retention fund to allow that program to continue.

In FY21, the LEPF received $16.4 million in revenue, a drop of 17 percent compared with the prior year, and in FY22 it received $5.9 million, less than a third of its FY21 revenue and far below the $24.1 million projected. These changes threaten the $224.3 thousand NMLEA is set to receive for officer training and the $2 million available for state police in the event of governor-ordered special deployments. Section 29-13-4(D) NMSA 1978 provides that, should the amount of funds in the LEPF be insufficient to cover total allocations, DFA shall reduce allocations to the maximum amount permitted by available funds. At current revenue levels, the retention program will have to reduce distributions in FY24 and beyond, putting the recent policy changes enhancing benefits for officers at risk.

The distribution change in SB491 resumes the level of distribution that had been sent to the law enforcement protection fund when insurance premium tax and related statutes were under the Office of Superintendent of Insurance administration.

The Department of Finance and Administration notes the department has sent out payments despite insufficient funds:

> Per 29-13-4 NMSA 1978, the FY23 base distribution was increased for all law enforcement agencies to $45,000 and $1,000 per certified full time law enforcement officer, for a total distribution of $10,396,500 that was sent to the qualifying law enforcement agencies. This distribution was made prior to notification that the LEPF distribution from the insurance fund had inadvertently included the premiums from the health insurance in prior years but which were not included in the FY23 revenues received. This exclusion of the health insurance tax leaves the LEPF with a negative cash balance for FY23.

The House Appropriations and Finance Committee substitute for House Bills 2 and 3, as amended by the Senate Finance Committee, includes $8.2 million for the LEPF to resolve the shortfall noted by DFA for FY23 but does not provide additional funding to the LEPF going forward.

The Department of Public Safety adds:

> The Department of Public Safety (DPS) is a recipient of LEPF for New Mexico State Police (NMSP) operations, New Mexico Law Enforcement Academy (NMLEA) training services, the Peace Officers' Survivors Fund (POSF), and the new Law Enforcement Retention Fund (LERF). The Office of the Superintendent of Insurance (OSI) managed the insurance premium tax program (which distributes insurance tax funds) until 2020 when it was transferred to the Taxation and Revenue Department (TRD). Since then, TRD has updated tax returns for the program, which it contends allows them to appropriately manage the program, but has been unable to provide data documenting accurate revenues and distributions which make projecting future funding difficult for LFC, the Department of Finance and Administration (DFA), and recipient entities.

PERFORMANCE IMPLICATIONS

The Department of Finance and Administration adds:

> Section 29-13-4 NMSA 1978 as amended, states, beginning in FY24 that the division, defined as the Local Government Division (LGD) of the Department Of Finance And Administration (DFA) shall distribute money in the fund in the amount of $95,000 for each qualifying municipal, school district, university police departments and the county sheriff departments. Each department shall be entitled to $1,500 per certified police officer employed full time within their department. Tribal police departments shall be entitled to $1,500 per certified police officer employed full time within their departments. Also, any department that assigns officers as school resource officers shall be entitled to $1,500 per assigned officer for training purposes.
>
> The Law Enforcement Academy is entitled to $24,500 to provide tourniquet and trauma kits along with training on these kits. DPS is entitled to $200,000 to carry out the purposes of the law enforcement training act.
>
> After all the above distributions are made, DPS shall receive not more than $2 million of the LEPF balance for the DPS' law enforcement retention fund.

The Department of Public Safety notes:

> DPS will have to reduce future LERF distributions to participating law enforcement agencies by approximately 20 percent in FY 2024 and an estimated 60 percent reduction in FY 2025 forward, which defeats the legislative intent of providing a 5 percent retention payment to eligible commissioned officers.

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

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