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BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; TRANSFERRING COLLECTION AND  
ADMINISTRATION OF THE PREMIUM TAX AND THE HEALTH INSURANCE  
PREMIUM SURTAX TO THE TAXATION AND REVENUE DEPARTMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 1-19A-10 NMSA 1978 (being Laws 2003,  
Chapter 14, Section 10, as amended) is amended to read:

"1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

A. There is created in the state treasury the  
"public election fund" solely for the purposes of:

(1) financing the election campaigns of  
certified candidates for covered offices;

(2) paying administrative and enforcement  
costs of the Voter Action Act; and

(3) carrying out all other specified

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1 provisions of the Voter Action Act.

2 B. The state treasurer shall invest the funds as  
3 other state funds are invested, and all income derived from the  
4 fund shall be credited directly to the fund. Remaining  
5 balances at the end of a fiscal year shall remain in the  
6 election fund and not revert to the general fund.

7 C. Money received from the following sources shall  
8 be deposited directly into the fund:

9 (1) qualifying contributions that have been  
10 submitted to the secretary;

11 (2) any recurring balance of unspent fund  
12 money distributed to a certified candidate who does not remain  
13 a candidate through the primary or general election period for  
14 which the money was distributed;

15 (3) money that remains unspent or unencumbered  
16 by a certified candidate following the date of the primary  
17 election;

18 (4) money that remains unspent or unencumbered  
19 by a certified candidate following the date of the general  
20 election;

21 (5) unspent seed money that cannot be used for  
22 any other purpose;

23 (6) money distributed to the fund from funds  
24 received pursuant to the Uniform Unclaimed Property Act (1995);  
25 and

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1 (7) money appropriated by the legislature.

2 D. A subaccount shall be established in the fund,  
3 and money in the subaccount shall only be used to pay the costs  
4 of carrying out the provisions of the Voter Action Act related  
5 to public regulation commission elections.

6 E. Three hundred thousand dollars (\$300,000) per  
7 year shall be collected and deposited in the subaccount for  
8 public regulation commission elections as follows:

9 (1) one hundred thousand dollars (\$100,000)  
10 from inspection and supervision fees collected pursuant to  
11 Section 62-8-8 NMSA 1978;

12 (2) one hundred thousand dollars (\$100,000)  
13 from utility and carrier inspection fees collected pursuant to  
14 Section 63-7-20 NMSA 1978; and

15 (3) one hundred thousand dollars (\$100,000)  
16 from the [insurance] premium tax collected pursuant to Section  
17 [~~59A-6-2 NMSA 1978~~] 2 of this 2011 act."

18 SECTION 2. A new section of the Tax Administration Act is  
19 enacted to read:

20 "[NEW MATERIAL] DISTRIBUTIONS--PREMIUM TAX--PUBLIC  
21 ELECTION FUND.--

22 A. Beginning on July 1, 2011, a distribution  
23 pursuant to Section 7-1-6.1 NMSA 1978 shall be made quarterly  
24 from the net receipts available for distribution to the general  
25 fund from the premium tax imposed pursuant to Section 59A-6-2

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1 NMSA 1978 to the subaccount for public regulation commission  
2 elections of the public election fund in the amount of twenty-  
3 five thousand dollars (\$25,000).

4 B. Beginning on July 1, 2011, a distribution  
5 pursuant to Section 7-1-6.1 NMSA 1978 shall be made quarterly  
6 from the net receipts available from the premium tax imposed  
7 pursuant to Section 59A-6-2 NMSA 1978 derived from property and  
8 vehicle insurance business of the entire amount of premium  
9 taxes paid exclusive of penalties and interest to the fire  
10 protection fund.

11 C. Beginning on July 1, 2011, a distribution  
12 pursuant to Section 7-1-6.1 NMSA 1978 shall be made quarterly  
13 from the net receipts available from the premium tax imposed  
14 pursuant to Section 59A-6-2 NMSA 1978 in an amount equal to ten  
15 percent of premium taxes paid that are derived from life,  
16 general casualty and title insurance exclusive of penalties and  
17 interest to the law enforcement protection fund."

18 SECTION 3. A new section of the Tax Administration Act is  
19 enacted to read:

20 "[NEW MATERIAL] PREMIUM TAX--HEALTH INSURANCE PREMIUM  
21 SURTAX--COLLECTION AND ADMINISTRATION.--The premium tax and the  
22 health insurance premium surtax imposed pursuant to Section  
23 59A-6-2 NMSA 1978 shall be collected by the taxation and  
24 revenue department and administered pursuant to the Tax  
25 Administration Act."

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1           SECTION 4. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 102, as amended) is amended to read:

3           "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

4           A. The premium tax provided for in this section  
5 shall apply as to the following taxpayers:

6                   (1) each insurer authorized to transact  
7 insurance in New Mexico;

8                   (2) each insurer formerly authorized to  
9 transact insurance in New Mexico and receiving premiums on  
10 policies remaining in force in New Mexico, except that this  
11 provision shall not apply as to an insurer that withdrew from  
12 New Mexico prior to March 26, 1955;

13                   (3) each plan operating under provisions of  
14 Chapter 59A, Articles 46 through 49 NMSA 1978;

15                   (4) each property bondsman, as that person is  
16 defined in Section 59A-51-2 NMSA 1978, as to any consideration  
17 received as security or surety for a bail bond in connection  
18 with a judicial proceeding, which consideration shall be  
19 considered "gross premiums" for the purposes of this section;  
20 and

21                   (5) each unauthorized insurer that has assumed  
22 a contract or policy of insurance directly or indirectly from  
23 an authorized or formerly authorized insurer and is receiving  
24 premiums on such policies remaining in force in New Mexico,  
25 except that this provision shall not apply if a ceding insurer

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1 continues to pay the tax provided in this section as to such  
2 policy or contract.

3 B. ~~[Each such]~~ A taxpayer to which Subsection A of  
4 this section applies shall pay ~~[in accordance with this~~  
5 ~~subsection]~~ to the taxation and revenue department a "premium  
6 tax" of three and three-thousandths percent of the gross  
7 premiums and membership and policy fees received or written by  
8 it, as reported in Schedule T and supporting schedules of its  
9 annual financial statement on insurance or contracts covering  
10 risks within this state during the preceding calendar year,  
11 less all return premiums, including dividends paid or credited  
12 to policyholders or contract holders and premiums received for  
13 reinsurance on New Mexico risks.

14 C. In addition to the premium tax imposed pursuant  
15 to Subsection B of this section, each taxpayer described in  
16 Subsection A of this section that transacts health insurance in  
17 New Mexico or is a plan described in Chapter 59A, Article 46 or  
18 47 NMSA 1978 shall pay a "health insurance premium surtax" to  
19 the taxation and revenue department of one percent of the gross  
20 health insurance premiums and membership and policy fees  
21 received by it on hospital and medical expense incurred  
22 insurance or contracts; nonprofit health care service plan  
23 contracts, excluding dental or vision only contracts; and  
24 health maintenance organization subscriber contracts covering  
25 health risks within this state during the preceding calendar

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1 year, less all return health insurance premiums, including  
2 dividends paid or credited to policyholders or contract holders  
3 and health insurance premiums received for reinsurance on New  
4 Mexico risks. Except as provided in this section, all  
5 references in the Insurance Code to the premium tax shall  
6 include both the premium tax and the health insurance premium  
7 surtax.

8 D. For each calendar quarter, an estimated payment  
9 of the premium tax and the health insurance premium surtax  
10 shall be made on April 15, July 15, October 15 and the  
11 following January 15. The estimated payments shall be equal to  
12 at least one-fourth of either the payment made during the  
13 previous calendar year or eighty percent of the actual payment  
14 due for the current calendar year, whichever is greater. The  
15 final adjustment for payments due for the prior year shall be  
16 made with the return, which shall be filed on April 15 of each  
17 year, at which time all taxes for that year are due. Dividends  
18 paid or credited to policyholders or contract holders and  
19 refunds, savings, savings coupons and similar returns or  
20 credits applied or credited to payment of premiums for  
21 existing, new or additional insurance shall, in the amount so  
22 used, constitute premiums subject to tax under this section for  
23 the year in which so applied or credited.

24 E. Exempted from the taxes imposed by this section  
25 are:

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1 (1) premiums attributable to insurance or  
2 contracts purchased by the state or a political subdivision for  
3 the state's or political subdivision's active or retired  
4 employees; and

5 (2) payments received by a health maintenance  
6 organization from the federal secretary of health and human  
7 services pursuant to a contract issued under the provisions of  
8 42 U.S.C. Section 1395 mm(g)."

9 SECTION 5. Section 59A-6-3 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 103) is amended to read:

11 "59A-6-3. INSURER MUST PAY TAX ON WITHDRAWAL FROM STATE.--  
12 Any insurer holding certificate of authority to transact  
13 insurance in New Mexico [~~which~~] that ceases to do business in  
14 the state shall thereupon file with the superintendent and the  
15 taxation and revenue department a report of its premiums  
16 collected to date of such cessation of business [~~which~~] that are  
17 subject to premium tax as provided by Section [~~102 of this~~  
18 ~~article~~] 59A-6-2 NMSA 1978 and not theretofore reported, and  
19 forthwith pay to the [~~superintendent~~] taxation and revenue  
20 department the tax thereon and surrender its certificate of  
21 authority to the superintendent."

22 SECTION 6. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 105, as amended) is amended to read:

24 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

25 A. All money received by the division for fees,

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1 licenses and penalties [~~and taxes~~] shall be paid daily by the  
2 superintendent to the state treasurer and credited to the  
3 "insurance department suspense fund" except as provided by:

- 4 (1) the Law Enforcement Protection Fund Act;  
5 (2) Section 59A-6-1.1 NMSA 1978; and  
6 (3) the Voter Action Act.

7 B. The superintendent may authorize refund of money  
8 erroneously paid as fees, licenses or penalties [~~or taxes~~] from  
9 the insurance department suspense fund under request for refund  
10 made within three years after the erroneous payment. [~~In the  
11 case of premium taxes erroneously paid or overpaid in  
12 accordance with law, refund may also be requested as a credit  
13 against premium taxes due in any annual or quarterly premium  
14 tax return filed within three years of the erroneous or excess  
15 payment.~~]

16 C. The "insurance operations fund" is created in  
17 the state treasury. The fund shall consist of the  
18 distributions made to it pursuant to Subsection D of this  
19 section. The legislature shall annually appropriate from the  
20 fund to the division those amounts necessary for the division  
21 to carry out its responsibilities pursuant to the Insurance  
22 Code and other laws. Any balance in the fund at the end of a  
23 fiscal year greater than one-half of that fiscal year's  
24 appropriation shall revert to the general fund.

25 D. At the end of every month, after applicable

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1 refunds are made pursuant to Subsection B of this section, the  
2 treasurer shall make the following transfers from the balance  
3 remaining in the insurance department suspense fund:

4 (1) to the "fire protection fund", that part  
5 of the balance derived from property and vehicle insurance  
6 business;

7 (2) to the insurance operations fund, that  
8 part of the balance derived from the fees imposed pursuant to  
9 Subsections A and E of Section 59A-6-1 NMSA 1978 other than  
10 fees derived from property and vehicle insurance business; and

11 (3) to the general fund, the balance remaining  
12 in the insurance department suspense fund derived from all  
13 other kinds of insurance business."

14 SECTION 7. TEMPORARY PROVISION.--

15 A. The insurance division of the public regulation  
16 commission shall transfer by 5:00 p.m. on June 30, 2011 all  
17 files or records, including all electronic files or records, of  
18 taxpayers who meet the criteria of Subsection A of Section  
19 59A-6-2 NMSA 1978 pertaining to tax liabilities due or  
20 unresolved and estimated taxes paid in the current calendar  
21 year and any other information that is necessary to facilitate  
22 the collection of the premium tax and the health insurance  
23 premium surtax imposed pursuant to Section 59A-6-2 NMSA 1978 by  
24 the taxation and revenue department.

25 B. As of June 30, 2011, the insurance division of

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1 the public regulation commission shall determine the amount of  
2 revenue in the insurance department suspense fund derived from  
3 premium taxes or health insurance premium surtaxes and the  
4 interest and penalties charged on those payments or accruing to  
5 the fund based on those payments and transfer that amount to  
6 the taxation and revenue department no later than 5:00 p.m. on  
7 July 1, 2011.

8 C. Contracts entered into by the insurance division  
9 or other division of the public regulation commission with  
10 taxpayers regarding the collection of the premium tax or the  
11 health insurance premium surtax shall be provided by the public  
12 regulation commission to the taxation and revenue department by  
13 5:00 p.m. on June 30, 2011. The taxation and revenue  
14 department shall review any contract entered into between the  
15 public regulation commission or its divisions with a taxpayer  
16 that alters the amount or timing of payment due to the state of  
17 tax liabilities of the taxpayer and may at its discretion  
18 renegotiate the contract or direct the taxpayer to enter the  
19 managed audit program.

20 D. All duties and responsibilities of the insurance  
21 division of the public regulation commission regarding  
22 collection and administration of the premium tax and the health  
23 insurance premium surtax shall cease on July 1, 2011.

24 **SECTION 8. EFFECTIVE DATE.**--The effective date of the  
25 provisions of Sections 1 through 6 of this act is July 1, 2011.

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