

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 5, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1535 by Eiland (Relating to the participation of this state in the Surplus Lines Insurance Multi-State Compliance Compact.), **As Introduced**

There is an indeterminate fiscal impact to the state from the provisions of this bill because of the potential change in premium tax revenue cannot be determined.

The bill would amend Subtitle I, Title 6, of the Insurance Code, to add new Chapter 981A, regarding the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT).

The bill would enact SLIMPACT with Texas entering into a compact with all other states enacting substantially similar legislation. SLIMPACT would establish the Surplus Lines Insurance Multi-State Compliance Commission with the power to adopt mandatory rules regarding nonadmitted insurance of multi-state risks, and a clearinghouse for receipt and allocation of premium tax from and among the compacting states. SLIMPACT would limit compacting states to requiring the payment of premium tax annually, semiannually, or quarterly utilizing one or more of the following dates only: March 1, June 1, September 1, and December 1.

The bill would describe the powers and duties, organization, voting procedures, meeting requirements, operating procedures, and rulemaking process of the Surplus Lines Insurance Multi-State Compliance Commission. The bill would provide for dispute resolution, review of committee decisions, an amendment process, and for withdrawal from, and dissolution of, the compact.

The bill would (1) transfer authority over the collection, enforcement, and administration of nonadmitted insurance taxes from the Comptroller to the Surplus Lines Insurance Multi-State Compliance Commission; (2) provide that in the event that laws of this state conflict with the compact, the compact controls, except that if the conflict is between the compact and the Texas Constitution, the Texas Constitution controls; (3) make conforming changes to Insurance Code Chapters 981 and 982; (4) require the Governor to appoint a member to represent this state on the commission; and (4) allow the Commissioner of Insurance to adopt rules necessary to implement this act or to comply with the requirements of SLIMPACT.

Under the provisions of the bill, the compact would become effective and binding upon enactment by two states; the commission would become effective upon the enactment by ten states, or alternatively, upon enactment by states representing more than 40 percent of the total surplus lines market.

The bill would take effect September 1, 2011.

The President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law July 21, 2010. Dodd-Frank incorporated the Nonadmitted Insurance and Reinsurance Reform Act (NRRA) as Title V, Subtitle B, Part I. Provisions of the act affecting surplus lines insurance taxation take effect July 21, 2011.

Currently, Texas collects surplus lines and independently procured insurance premium taxes on policies or portions of policies covering risks in Texas. Under the terms of NRRA, as of July 21, 2011 only the home state of an insured will be authorized to collect premium tax on a surplus lines or

independently procured policy, and Texas will collect premium taxes on all surplus lines policies written for insureds whose home state is Texas, regardless of where the actual covered risks are located. The intent of the law is to simplify the reporting process for surplus lines insurance agents and not to change the current distribution of premium tax revenue. To this end, NRRA allows states to form compacts or enter other agreements in order to allocate tax revenue from the home states of insureds to the states in which the covered risks are located. States are not required to join these compacts or other agreements.

Based on the analysis by the Comptroller of Public Accounts, it is assumed that Texas would receive additional tax revenue on policies written for Texas-based companies for risks located in other states. However, Texas would lose the tax revenue currently collected on policies written for out-of-state companies' Texas risks. Based on the analysis by the Comptroller of Public Accounts, fiscal impact of this bill cannot be determined.

The bill would limit the authority of the Comptroller to audit the premium tax payments of surplus lines agencies and insurers. Information provided by the Comptroller indicates that from calendar years 2008 to 2010 the Comptroller assessed more than \$8,542,000 in additional surplus lines premium tax, not including interest and penalties. This analysis assumes Comptroller audits of surplus lines premium tax payments would end upon enactment of this bill.

This analysis assumes that the Surplus Lines Insurance Multi-State Compliance Commission will adopt an allocation formula that will return to this state surplus lines premium tax in proportion to the this states share of the surplus lines insurance market. However, the actual allocation formula that would be adopted is unknown. Under the terms of SLIMPACT, each compacting state would be limited to one commission member, each with one vote. The commission, by simple majority vote, would be able to enact a substantially different allocation formula, and that formula would be binding upon this state.

This analysis does not consider the costs associated with implementing and operating the Surplus Lines Insurance Multi-State Compliance Commission and Clearinghouse. As the amount of surplus line insurance placed for, and the associated premium tax revenue received from Texas insureds would be much greater than that of other compacting states, it is likely that Texas insureds would bear most of these costs.

Under the provisions of SLIMPACT no other tax, fee assessment or other charge by any governmental or quasi governmental agency is permitted. In the event that the Texas Windstorm Insurance Association (TWIA) issues Class 2 public securities, 70 percent of the repayment of the bond debt will be from assessments on premiums for insurance policies in the Tier 1 coastal counties. This includes surplus lines policies. Each policy would be assessed based on the premium amount. Since there is not a single rate of assessment for the repayment of the securities and each surcharge amount will be different, it will not be possible to assess the surplus lines policies in the tier 1 counties for the repayment of the bonds.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 454 Department of Insurance

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