

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

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

IN RE: HB1951 by Taylor, Larry (Relating to the continuation and operation of the Texas Department of Insurance and the operation of certain insurance programs; imposing administrative penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1951, As Engrossed: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2012 | \$0 |
| 2013 | \$0 |
| 2014 | \$0 |
| 2015 | \$0 |
| 2016 | \$0 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Revenue Gain/(Loss) from <i>Dept Ins Operating</i> <i>Acct</i> 36 | Probable Savings/ (Cost) from <i>Dept Ins Operating</i> <i>Acct</i> 36 | Probable Revenue Gain/(Loss) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042 | Probable Savings/ (Cost) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042 |
|-------------|---|---|--|--|
| 2012 | \$61,608 | (\$61,608) | \$1,197,355 | (\$1,197,355) |
| 2013 | \$56,903 | (\$56,903) | \$963,300 | (\$963,300) |
| 2014 | \$56,903 | (\$56,903) | \$696,678 | (\$696,678) |
| 2015 | \$56,903 | (\$56,903) | \$768,381 | (\$768,381) |
| 2016 | \$56,903 | (\$56,903) | \$696,678 | (\$696,678) |

| Fiscal Year | Change in Number of State Employees from FY 2011 |
|-------------|--|
| 2012 | 11.5 |
| 2013 | 11.5 |
| 2014 | 10.5 |
| 2015 | 10.5 |
| 2016 | 10.5 |

Fiscal Analysis

The bill would amend the Insurance Code relating to the continuation and operation of the Texas Department of Insurance (TDI) and the operation of certain insurance programs; imposing administrative penalties. TDI is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue TDI for 12 years and would take effect on September 1, 2011.

Article 1 would provide for contractual limits and claims filings periods for residential and commercial insurance policies and would require TDI to develop and encourage the use of appropriate alternative dispute resolution procedures. Additionally, Article 1 would require TDI to conduct a study concerning the feasibility and effectiveness of the establishment of a mandatory medical reinsurance program in the state through which issuers of group health benefit plans offered by employers of 100 or fewer employees would be required to purchase reinsurance. The bill would require TDI to post information on its website on how to obtain credit and claims history reports.

Article 2 would eliminate unnecessary advisory committees in statute, and requires TDI to ensure that agency-created advisory committees meet standard criteria.

Article 3 would require HMO's, accident and health insurance companies, and companies providing insurance to small business to send a 60-day notice before a rate increase and the actual dollar amount of the increase, and would set a 30-day time limit for the Department to review and administratively disapprove a property and casualty insurance rate under the file-and-use system. Additionally, Article 3 would remove the discretion of the department to request additional supporting information for a claim and replace it with the discretion of the filer to include additional supporting information.

Article 4 would authorize the State Fire Marshal's Office (SFMO), housed at TDI, to charge a fee for inspections of privately owned buildings. The bill would require the SFMO to periodically inspect state-leased buildings and requires the SFMO to create a risk-based approach to conducting its routine inspections of state buildings. Article 4 would require the Commissioner of Insurance to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.

Article 5 would set deadlines for TDI to send notifications to title insurance agents and appoint title insurance companies during the licensing and licensing renewal process. Article 5 would set guidelines for TDI regarding licensing and disciplinary notifications. Additionally, the bill would remove the requirement of TDI approval of reinsurance contracts forms for title companies that wish to reinsure any of its policies and contracts. The bill would require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

Article 6 would clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.

Article 7 would require TDI to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims. Additionally Article 7 would create a Health Innovations Program and require TDI to study the demographics of uninsured Texans and reasons why individuals are uninsured. The bill would authorize TDI to receive gifts or grants to assist with funding this program.

Article 8 would require TDI to determine, at least every six years, which areas of the state should be designated as underserved and to study the accuracy of current designations for the purpose of increasing access to insurance in those areas.

Article 9 would make several procedural changes to the Texas Windstorm Insurance Association (TWIA), including subjecting TWIA to open meetings and open records provisions, providing that any closed meetings are open to the Commissioner of Insurance, and making changes to the policy renewal and eligibility processes.

Article 10 would create a Public Insurance Adjusters advisory board.

Article 11 would allow TDI to enter into information sharing agreements with federal and state

agencies, establish a procedure to certify and rate qualified health plans, and provide comparative and eligibility information.

Article 12 would require a residential property policy to require the insured to participate in an alternative resolution procedure before filing a private action.

Article 13 would prohibit insurance companies from reporting claims to a database until the claim has been filed.

Article 14 would provide for prompt pay requirements for Pharmacy Benefits Management.

Article 15 would require life insurance companies to obtain beneficiary authorization before depositing funds into a retained asset account.

Article 16 would prohibit managed care plans from requiring that therapeutic optometrists or ophthalmologists participate in a payment plan that they do not wish to participate in.

Article 17 would allow for the regulation of preferred provider organizations.

Article 18 would limit FAIR plan liability to amounts for loss of the insured structure, contents, and additional living expenses.

Article 19 would require the Commissioner to adopt standard forms that an insurer is required to use in addition to its own forms.

Article 20 would increase liability on surety bonds from \$100,000 to \$1 million for requiring reinsurance.

Article 21 would provide that property insurance appraisal decisions are binding only as to the amount of loss, and prohibits them from being used to determine liability issues.

Article 22 would allow employers to make financial contributions to or premium payments for an employee or retiree's individual consumer directed health insurance policy, in a way that does not have negative tax consequences.

Article 23 would provide that the insured has the right to exclude named persons from an automobile policy.

Article 24 would amend the entrance exam and hours of instruction requirements for residential fire alarm technicians.

Article 25 would provide that a title company is not required to offer an endorsement insuring a loss from the extraction of coal, lignite, oil, or gas.

Article 26 would prohibit rescission of health insurance, absent fraud or intentional misrepresentation.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect on September 1, 2011.

Methodology

Based on information provided by TDI, this analysis assumes that implementation of Article 3, 14, 15, and 26 of the bill could result in a one-time revenue gain (\$52,500 in fiscal year 2012) in General Revenue-Dedicated Texas Department of Insurance Fund 36 from filing fees. Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the department would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Article 1: Based on the analysis by TDI, a majority of the work in conducting a study on mandatory medical reinsurance would be performed by an outside actuarial consulting firm, but 1.0 full-time equivalents (FTEs) would be needed to manage and administer other facets of the study. The cost of the outside actuarial consulting firm is anticipated to be \$375,000 in fiscal year 2012 and \$125,000 in fiscal year 2013. Additionally, the 1.0 FTE would cost \$74,624 in fiscal year 2012 and \$69,919 in fiscal year 2013 from General Revenue – Insurance Maintenance Tax.

Article 4: Based on the analysis provided by the Sunset Advisory Commission (SAC), the provision will be revenue neutral. Authorizing the SFMO to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the SFMO's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the SFMO and the number of requests that continue to come in once the SFMO charges for this service. Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the department would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Article 5: Based on the analysis by TDI, implementation of Article 5 of the bill would require 5.5 FTEs in each fiscal year in the enforcement division due to the increased workload created by additional title insurance enforcement cases and increased frequency of rate hearings and 3.0 FTEs in the Title Division for the increased licensing workload. Based on the analysis by TDI, the 8.5 FTEs would cost \$663,276 in fiscal year 2012 and \$616,631 in fiscal year 2013 through 2016 from General Revenue – Insurance Maintenance Tax. Additionally, expert witnesses will be required for the additional rate cases at a cost of \$72,000 in fiscal year 2013 and 2015 and additional operating expenses for updated publications at a cost of \$297 is anticipated in fiscal years 2014 and 2016.

Article 7: Based on the analysis by TDI, implementation of Article 7 of the bill would require 1.0 FTEs to execute the statutory charge of developing and implementing the health benefit plan innovations program. The 1.0 FTE would cost \$84,455 in fiscal year 2012 and \$79,750 each fiscal year of 2013 through 2016 to be funded from General Revenue – Insurance Maintenance Tax.

Article 11: The Health and Human Services Commission (HHSC) indicates it would incur costs to allow its eligibility systems to interface with an exchange and for data center expansion, whether the exchange is established under the authority of this bill or established by the federal government. HHSC estimates an All Funds cost of \$12,000,000 in fiscal year 2012 and \$12,000,000 in fiscal year 2013 to allow its eligibility systems to interface with an exchange. Over the biennium, it includes \$14,000,000 for data center expansion and \$10,000,000 for the Texas Integrated Eligibility Redesign System (TIERS) to interface with an exchange. HHSC anticipates receiving a 90 percent federal match for costs associated with technology related changes required to interface with the exchange. Based on this analysis, HHSC systems changes would cost an estimated \$2,400,000 in General Revenue for the biennium. HHSC would also need to request increased capital authority for implementing these changes. This analysis assumes that other functions required under the bill can be absorbed within existing resources.

TDI's analysis assumes that implementation of the exchange would have a fiscal impact, but is not able to determine the extent. The degree to which federal funds will be available is uncertain, but implementation could be scaled to available resources as needed.

Article 17: The bill requires that contracting entities register with the TDI and allows for the regulation of certain health care provider network contract arrangements relating to the delivery of and

payment for health care services to individuals covered under a health benefit plan. Based on the analysis provided by TDI, it is assumed that 200 contracting entities will seek registration for the non workers' compensation healthcare. Implementation of the bill will require 1.0 FTEs, an Insurance Specialist III, to perform the registration process and periodic updates for contracting entities. Based on the analysis provided by TDI, the 1.0 FTE would cost \$61,608 in fiscal year 2012 and \$56,903 in fiscal years 2013 through 2016 from General Revenue – Dedicated Fund 36 (GR-D Fund 36). Implementation of the bill would require TDI to set a reasonable fee by rule as necessary to administer the registration process.

Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to TDI to implement Articles 1, 4, 5, 7, and 17 of this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Technology

The bill is anticipated to have a technology impact of \$14,700 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission

LBB Staff: JOB, KM, MW, CH