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HOUSE BILL 586

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

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE PREMIUM TAX OFFSET
ACT; AUTHORIZING THE ISSUANCE AND SALE OF PREMIUM TAX OFFSET
CERTIFICATES FOR THE PURPOSE OF DECREASING THE UNFUNDED
LIABILITY OF THE EDUCATIONAL RETIREMENT FUND; MAKING AN
APPROPRIATION.

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

SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
through 7 of this act may be cited as the "Premium Tax Offset
Act".

SECTION 2. ~~[NEW MATERIAL]~~ FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) a high quality public education system is
absolutely necessary for the future of New Mexico;

(2) intrinsic to a high quality education are

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1 teachers who are confident that they can pursue a career in
2 public education with the knowledge that a viable and healthy
3 pension system will be available on retirement;

4 (3) the educational retirement system in New
5 Mexico, while in good financial health for the short term, is
6 in critical need of additional money if it is to avoid a large
7 unfunded liability in the future; and

8 (4) the current revenue shortfall makes it
9 unlikely that the critical monetary need of the educational
10 retirement system can be satisfied with funding from
11 conventional sources.

12 B. The purpose of the Premium Tax Offset Act is to
13 provide a mechanism for satisfying in part the unfunded
14 liability of the state educational retirement system by
15 authorizing the issuance and sale of premium tax offset
16 certificates to investors who will receive an offset against
17 future premium tax liability and depositing the proceeds from
18 the sale of the certificates into the educational retirement
19 fund.

20 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Premium Tax Offset Act:

22 A. "board" means the state board of finance;

23 B. "fund allocation date" means the date that the
24 manager receives the sale proceeds from investors and delivers
25 the premium tax offset certificates, issued by the state, to

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1 the investors;

2 C. "full offset amount" means the full face amount
3 of all the premium tax offset certificates issued by the state
4 and delivered to the investors;

5 D. "investor" means a person liable for premium
6 taxes who invests in premium tax offset certificates;

7 E. "manager" means the person selected pursuant to
8 Section 5 of the Premium Tax Offset Act to represent the state
9 in marketing, negotiating the terms of and, with the approval
10 of the board, selling premium tax offset certificates;

11 F. "premium tax" means:

12 (1) the premium tax levied pursuant to
13 Subsection B of Section 59A-6-2 NMSA 1978; or

14 (2) the health insurance premium surtax levied
15 pursuant to Subsection C of Section 59A-6-2 NMSA 1978; and

16 G. "premium tax offset certificate" means an
17 instrument issued by the state and sold to an investor and that
18 grants to the investor an offset against premium taxes due in a
19 total value equal to the face value of the certificate, with a
20 final maturity date of ten years from the date that the
21 certificate is first eligible to be utilized and at an
22 amortized rate of ten percent per year.

23 SECTION 4. [NEW MATERIAL] BOARD--ADDITIONAL DUTIES.--In
24 addition to its other duties, within thirty days of the
25 effective date of this act, the board shall determine whether

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1 the issuance and sale of premium tax offset certificates are in
2 the best interests of the state and the best interests of
3 members under the Educational Retirement Act. If the board
4 determines that premium tax offset certificates should be
5 issued, the board shall:

6 A. determine the full offset amount of the
7 certificates to be issued; provided that the full offset amount
8 shall not exceed four hundred million dollars (\$400,000,000);

9 B. pursuant to the Procurement Code and Section 5
10 of the Premium Tax Offset Act, select and contract with a
11 manager;

12 C. oversee the activities of the manager and
13 receive and review reports submitted by the manager;

14 D. upon the recommendation of the manager, review
15 the terms of the irrevocable purchase commitments negotiated by
16 the manager and, if it agrees that the terms are in the best
17 interest of the state and the best interests of members under
18 the Educational Retirement Act, authorize the manager to
19 proceed with the sale of the premium tax offset certificates;

20 E. upon the agreement of the manager to sell the
21 certificates, issue the certificates in the name of the state;
22 and

23 F. promulgate such rules as are necessary to carry
24 out the provisions of the Premium Tax Offset Act.

25 SECTION 5. [NEW MATERIAL] MANAGER--SELECTION--DUTIES.--

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1 A. After determining that premium tax offset
2 certificates should be issued, the board shall, within sixty
3 days of the determination, pursuant to the Procurement Code,
4 issue a request for proposals to select a manager. The request
5 for proposals shall require that the manager, or one of the
6 manager's principals, partners, subsidiaries or subcontractors,
7 including a principal or partner of a contractor, shall have,
8 at a minimum, the following qualifications:

9 (1) experience in structuring, marketing and
10 pre-selling insurance premium tax credit sale obligations;

11 (2) experience during the previous calendar
12 year with underwriting government securities transactions in
13 New Mexico; and

14 (3) experience during the previous calendar
15 year in managing a minimum of three hundred financing
16 transactions nationwide.

17 B. The fee to be paid a manager for marketing,
18 negotiating and selling premium tax offset certificates shall
19 be determined as part of the procurement process but shall not
20 exceed one and one-half percent of the full offset amount. In
21 addition, an annual management fee may be negotiated and paid
22 to the manager if the board determines that the manager is
23 needed during the term of the certificates.

24 C. Pursuant to the rules and direction of the board
25 and on behalf of the state, the manager shall:

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- 1 (1) solicit investors for the purchase of
2 premium tax offset certificates;
- 3 (2) negotiate the price and other terms of the
4 sale of the premium tax offset certificates; provided that:
- 5 (a) the final maturity date of each
6 certificate shall be ten years from the date that the
7 certificate is eligible to be utilized; and
- 8 (b) the premium taxes due by an investor
9 shall be offset by an amount equal to ten percent of the face
10 value of the certificate per year for ten consecutive years;
- 11 (3) obtain executed irrevocable purchase
12 commitments from investors for the full offset amount;
- 13 (4) after the approval by the board of the
14 executed irrevocable purchase commitments, enter into
15 agreements for the sale of the premium tax offset certificates;
- 16 (5) accept payment from the investors for the
17 premium tax offset certificates and, after withholding the fee
18 to be retained by the manager, deposit the proceeds from the
19 sale into the educational retirement fund;
- 20 (6) within thirty days of the fund allocation
21 date, submit a report to the board, the superintendent of
22 insurance, the governor and the legislative finance committee
23 with the following information:
- 24 (a) the name and address of each
25 investor from whom an investment was received, including the

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1 identification number used by the investor to pay premium
2 taxes;

3 (b) the amount of each investor's
4 investment;

5 (c) the date that the premium tax offset
6 certificate was issued; and

7 (d) such other information as is
8 required by rule of the board; and

9 (7) if retained by the board after the
10 issuance of the premium tax offset certificates, no later than
11 April 30 of each year, provide to the board an audited
12 financial statement of the manager's activities during the
13 previous calendar year, including the opinion of an independent
14 certified public accountant.

15 SECTION 6. [NEW MATERIAL] PREMIUM TAX OFFSETS--
16 UTILIZATION--EFFECTS.--

17 A. Each investor that makes an investment in a
18 premium tax offset certificate shall earn vested offsets
19 against future premium taxes equal to the face amount of the
20 certificate issued to the investor and evidencing the
21 investment of cash in the offsets. Tax offsets shall be vested
22 on the fund allocation date and shall be available to the
23 investor annually.

24 B. Each investor investing in the premium tax
25 offset certificates may:

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1 (1) take the vested tax offsets against
2 premium taxes otherwise due each year in accordance with the
3 terms of the premium tax offset certificate, beginning with the
4 first annual return filed following the purchase date of the
5 certificate and continuing for the next ten consecutive years;
6 and

7 (2) reduce its estimated quarterly payments of
8 premium tax liability in each year for which offsets are
9 available by the same proportion as the annual offset amount is
10 to the total annual premium tax otherwise due.

11 C. The offsets against taxes that are used by an
12 investor with respect to any year shall not exceed the full tax
13 liability of the investor for that year.

14 D. Any offsets against taxes that an investor is
15 permitted to use under Subsections A and B of this section, but
16 is unable to use because of Subsection C of this section, may
17 be carried forward indefinitely and used to offset the
18 investor's liability in any subsequent year in which the
19 investor has sufficient tax liability, including in a year in
20 which the investor also uses tax offsets that are allocated to
21 that year pursuant to Subsection B of this section.

22 E. An investor that has invested in premium tax
23 offset certificates is not required to reduce the amount of tax
24 liability included by the investor in connection with the
25 ratemaking for any insurance contract written because of a

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1 reduction in the investor's assessment derived from the offsets
2 granted under the certificate.

3 F. If the premium taxes that an investor does not
4 pay by virtue of the offsets earned under the Premium Tax
5 Offset Act would constitute a credit against another tax or
6 assessment if paid, the investor shall continue to earn the
7 credit as though the offset taxes were paid by cash.

8 G. An investor may transfer the offsets it receives
9 from the investment in premium tax offset certificates to
10 another investor; provided that the transferor delivers to the
11 superintendent of insurance within thirty days of the transfer
12 a written notice indicating the name of the transferee, the
13 amount of offsets being transferred and the year or years to
14 which the offsets are allocable as provided in Subsection B of
15 this section.

16 H. For statutory accounting purposes, an investor
17 may treat the transferable premium tax offsets as an admitted
18 asset, pursuant to the national association of insurance
19 commissioners accounting practices and procedures manual and
20 statement of statutory accounting principles no. 94.

21 SECTION 7. [NEW MATERIAL] STATE PLEDGE--CERTIFICATES
22 IRREVOCABLE.--The state pledges that the premium tax offsets
23 evidenced by premium tax offset certificates are irrevocable
24 and that an investor, legally holding title to a certificate,
25 shall be entitled to the offset evidenced by the certificate.

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1 The state further pledges that any law authorizing premium tax
2 offsets or the transfer of such offsets shall not be repealed
3 or amended in a manner that jeopardizes the offsets or the
4 transferability of the offsets without the consent of the
5 investors owning the offsets.

6 SECTION 8. Section 59A-6-2 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 102, as amended) is amended to read:

8 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

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

11 (1) each insurer authorized to transact
12 insurance in New Mexico;

13 (2) each insurer formerly authorized to
14 transact insurance in New Mexico and receiving premiums on
15 policies remaining in force in New Mexico, except that this
16 provision shall not apply as to an insurer that withdrew from
17 New Mexico prior to March 26, 1955;

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

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

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1 (5) each unauthorized insurer that has assumed
2 a contract or policy of insurance directly or indirectly from
3 an authorized or formerly authorized insurer and is receiving
4 premiums on such policies remaining in force in New Mexico,
5 except that this provision shall not apply if a ceding insurer
6 continues to pay the tax provided in this section as to such
7 policy or contract.

8 B. Except as provided in Subsection F of this
9 section, each such taxpayer shall pay in accordance with this
10 subsection a premium tax of three and three-thousandths percent
11 of the gross premiums and membership and policy fees received
12 or written by it, as reported in Schedule T and supporting
13 schedules of its annual financial statement on insurance or
14 contracts covering risks within this state during the preceding
15 calendar year, less all return premiums, including dividends
16 paid or credited to policyholders or contract holders and
17 premiums received for reinsurance on New Mexico risks.

18 C. Except as provided in Subsection F of this
19 section, in addition to the premium tax imposed pursuant to
20 Subsection B of this section, each taxpayer described in
21 Subsection A of this section that transacts health insurance in
22 New Mexico or is a plan described in Chapter 59A, Article 46 or
23 47 NMSA 1978 shall pay a health insurance premium surtax of one
24 percent of the gross health insurance premiums and membership
25 and policy fees received by it on hospital and medical expense

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1 incurred insurance or contracts; nonprofit health care service
2 plan contracts, excluding dental or vision only contracts; and
3 health maintenance organization subscriber contracts covering
4 health risks within this state during the preceding calendar
5 year, less all return health insurance premiums, including
6 dividends paid or credited to policyholders or contract holders
7 and health insurance premiums received for reinsurance on New
8 Mexico risks. Except as provided in this section, all
9 references in the Insurance Code to the premium tax shall
10 include both the premium tax and the health insurance premium
11 surtax.

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

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1 used, constitute premiums subject to tax under this section for
2 the year in which so applied or credited.

3 E. Exempted from the taxes imposed by this section
4 are:

5 (1) premiums attributable to insurance or
6 contracts purchased by the state or a political subdivision for
7 the state's or political subdivision's active or retired
8 employees; and

9 (2) payments received by a health maintenance
10 organization from the federal secretary of health and human
11 services pursuant to a contract issued under the provisions of
12 42 U.S.C. Section 1395 mm(g).

13 F. The amount of the premium tax due plus any
14 health insurance premium surtax due from a taxpayer who is an
15 investor under the Premium Tax Offset Act shall be the tax
16 otherwise due pursuant to Subsections B and C of this section
17 less an amount equal to the offset that may be taken for the
18 appropriate tax period by the investor pursuant to premium tax
19 offset certificates held by the investor and issued under the
20 Premium Tax Offset Act."

21 SECTION 9. Section 59A-6-5 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 105, as amended) is amended to read:

23 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

24 A. All money received by the division for fees,
25 licenses, penalties and taxes shall be paid daily by the

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1 superintendent to the state treasurer and credited to the
2 "insurance department suspense fund" except as provided by:

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

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

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

24 D. At the end of every month, after applicable
25 refunds are made pursuant to Subsection B of this section, the

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1 treasurer shall make the following transfers from the balance
2 remaining in the insurance department suspense fund:

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

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

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

13 E. The distributions of premium taxes to the law
14 enforcement protection fund and the fire protection fund
15 pursuant to this section shall be calculated:

16 (1) without considering the effect of any
17 offsets taken pursuant to premium tax offset certificates held
18 under the Premium Tax Offset Act; and

19 (2) as if the amount of the offsets were paid
20 in cash by the taxpayer at the time that the premium taxes were
21 due."