

<b>LFC Requester:</b>	<b>Greg Geisler</b>
-----------------------	---------------------

**AGENCY BILL ANALYSIS  
2013 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**    xx **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1/24/13  
**Bill No:** HB168

**Sponsor:** Rep. Mimi Stewart  
**Short**        NM Health Insurance Exchange  
**Title:**        Act

**Reviewing**        Attorney General's Office  
**Person Writing**        Brian Harris  
**Phone:** 827-7479        **Email** BHarris@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 SB 221 and HB 168 are the same legislation introduced concurrently.

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis: Sec. 1: Title

Sec. 2. defines 16 terms used in the Act. Notable definitions include:

(J) “Navigator” is defined as an “entity” that fills a wide variety of functions to help get people enrolled in health insurance plans. Specifically excluded from this concept is the ability to accept commissions from a “carrier” for helping to sign up, or refer individuals to a plan.

(B) “Carrier” is a ‘person’ licensed by the Superintendent of Insurance and providing health benefits or insurance plans.

(K) “Qualified employer” is one that makes health insurance available to its fulltime employees, has its principle place of business in the state and make health insurance available to all employees principally employed in the state.

Sec. 3 creates the 11 member board of directors of the NM Health Insurance Exchange. Service on the board is precluded if the individual is affiliated with or derives income from healthcare services, finance or coverage sectors. Board candidate must have relevant experience in some aspect of health insurance. This law imposes a fiduciary duty on the members of the board. Appointments are made as follows – the Governor appoints 3 from “qualified employers”; the Superintendent appoints 3 from resident consumers of health insurance; the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Senate minority floor leader and the House minority leader shall each appoint one member. Additional provisions set out routine obligations common to such boards, such as what constitutes a quorum, length of service, assuring broad and wide participation, recompense, appointment of various advisory committees, including one that is Native American specific.

Sec. 4. defines the authority of the board. It is authorized to seek funding from a wide variety of sources, including generation of income through fees and assessments; to support its operations.

Sec. 5 requires the Board to create a ‘Plan of Operation’ that establishes procedures for determining which qualified health plans will be offered through the Exchange, eligibility determinations, enrollment of qualified individuals, accounting procedures, publicity, and other provisions necessary and proper to execute the powers and duties of the board.

Sec. 6 sets out the Board's duties. It must, by August 1, 2013 establish a wide variety of eligibility criteria for participation in the Exchange, establish at least one ambulatory service center where people can apply to participate, report to the Governor and the Legislature. An additional report is required concerning "adverse selection" (a phrase not defined in the law); conduct audits, publish administrative costs, cooperate with other government entities providing health care, consult with tribal and pueblo leaders (including promoting "cultural competency" and designate a Native American liaison.

Sec. 7 grants authority and requires the Superintendent to promulgate rules necessary for carrying out the provisions of this law, and for resolving disputes concerning eligibility for participation, exemptions and other matters.

Sec. 8 mandates that the exchange is exempt from taxes and fees levied by the state or other political subdivision.

Sec. 9 grants contracting authority to receive federal funding from the state Human Services Department.

Sec. 10 requires the medical assistance division of the Human Services Department to cooperate and share information and to facilitate transitions between the exchange and Medicaid.

Sec. 11 requires the Superintendent and the Exchange to cooperate.

Sec. 12 adds a new section to the Tort Claims Act (NMSA 41-4-3) making the staff and the Board "public employees" for purposes of the Tort Claims Act.

Sec. 13 prevents the NM Health Care Alliance from issuing health plan coverage after December 31, 2013, and requires the Exchange Board to develop a plan for portability between the Exchange and the Alliance.

Sec. 14 transfers personal, funds and other things of value from the Alliance to the Exchange.

Sec. 15 provides for a delayed repeal of NMSA 59A-56-1 through 59A-56-25 on January 1, 2015.

Sec. 16 is a severability clause.

## **FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

## **SIGNIFICANT LEGAL ISSUES**

## **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

## **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

These bills were introduced concurrently in the Senate and the House.

#### **TECHNICAL ISSUES OR DRAFTING ERROR**

Use of language such as “linguistically and culturally appropriate” might lead to confusion and conflict over what this means in particular situations.

The terms “person” and “entity” seem to be used interchangeably.

The Bill’s definition of “small employer” might conflict with certain provisions of Federal law.

#### **OTHER SUBSTANTIVE LEGAL ISSUES**

#### **ALTERNATIVES TO ENACTING THIS BILL**

If this bill is not enacted the Federal government would most likely assume responsibility for creating and administering the exchange.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**