Ohio Legislative Service Commission

Ruhaiza Ridzwan

Fiscal Note & Local Impact Statement

Bill: H.B. 122 of the 129th G.A. **Date**: March 8, 2011

Status: As Introduced **Sponsor**: Rep. Hottinger

Local Impact Statement Procedure Required: No

Contents: To exempt state surplus lines insurance from regulation in Ohio when Ohio is not the home state of the insured and to make other changes to the law regulating surplus lines insurance

State Fiscal Highlights

STATE FUND	FY 2011	FY 2012	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Potential gain or loss	Potential gain or loss
Expenditures	- 0 -	- 0 -	- 0 -
Department of Insurance Operating Fund (Fund 5540)			
Revenues	- 0 -	Potential loss	Potential loss
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill authorizes the Superintendent of Insurance to enter into a multistate agreement or compact to administer and collect taxes related to unauthorized insurance and independently procured insurance. The bill prohibits the state from directly taxing unauthorized insurance and surplus lines brokers whose home state is not Ohio. These provisions may increase or decrease revenue from the state's 5% tax on surplus lines insurance.
- The bill exempts from the surplus lines tax, items other than the gross premium, thereby potentially decreasing revenue from the surplus lines tax. In FY 2010, the GRF received over $28 million from surplus lines tax receipts and fees.[1]
- The net effect of the tax changes may be to increase or decrease revenue to the GRF.
- The bill prohibits the state from directly regulating surplus lines brokers whose home state is not Ohio; such brokers would be regulated by their home states. This provision may decrease revenue from fees charged to surplus lines brokers whose

[1] Surplus lines tax receipts are classified as fee revenue in the state accounting system, and thus are not part of GRF tax collections from which allocations are made to the Local Government Fund (LGF) and the Public Library Fund (PLF).

home state is not Ohio. Any decrease in amounts collected would affect amounts allocated to the Department of Insurance Operating Fund (Fund 5540) and the GRF.

Local Fiscal Highlights

- The provision that exempts certain insurers, political subdivisions, or a consortium of subdivisions from the surplus lines tax requirements would have no direct fiscal impact on political subdivisions because this provision codifies current Department of Insurance practice in administering the tax.

Detailed Fiscal Analysis

The bill makes changes to Ohio's law regulating surplus lines insurance to make it consistent with requirements under federal law. Under the bill, unauthorized insurance and surplus lines brokers whose home state is not Ohio would no longer be subject to Ohio's law. Most of the bill's provisions have no significant fiscal effect on the state; the provisions that do have an effect, affect either the state's 5% tax on surplus lines insurance or fees related to unauthorized insurance and surplus lines brokers.

Under a recently enacted federal law, the Nonadmitted and Reinsurance Reform Act (NRRA), enacted on July 21, 2010, all states are prohibited from regulating, levying a premium tax, or requiring a surplus lines broker to be licensed in order to sell unauthorized insurance, when that state is not the insured's "home state."[2] Therefore, such insurers would pay premium taxes only to their home states. Thus, it is up to each home state to collect all premium taxes due from insurers in the unauthorized market located there, without regard to the location of policyholders, and allocate such tax among states based on a multistate agreement or compact. Under NRRA, a state may enter into a multistate compact for the purposes of unauthorized insurance premium tax receipts allocation. If a state does not adopt the multistate compact prior to 330 days after the effective date of the act, by June 16, 2011, the premium tax allocation under the multistate contract will not be effective for that state until January 1, 2012.

The bill allows the Superintendent of Insurance to participate in a multistate agreement or compact to administer and collect the 5% tax on surplus lines insurance (this tax is unrelated to the 1.4% tax on premiums paid to domestic and foreign insurance companies authorized to do business in Ohio). This bill also allows the state to collect surplus lines tax based on all insurance transactions, procured inside or outside of Ohio, from Ohio-based insurers in the unauthorized market.

---

[2] A "surplus lines" insurer is an insurer that is not licensed to do business in this state, but is nonetheless approved by the Superintendent of Insurance to offer insurance in this state because coverage is not available through licensed insurers. Surplus lines insurers are also called "non-admitted companies" while insurers licensed in the state are called "admitted companies." Please see the bill for the definition of "home state."

The bill specifies that Ohio's law regarding unauthorized insurance and surplus lines brokers' licensure would not apply to any selling, soliciting, or negotiating of unauthorized insurance that takes place in an insured's home state if the home state of the insured is not Ohio. As a result, the state would no longer be able to regulate and tax premiums of a surplus lines insurer whose home state is not Ohio. The bill revises the due date filing requirement for licensed surplus lines brokers from the last day of January to March.

The bill allows the Superintendent to waive the 25% penalty and interest charge for a first-time inadvertent nonpayment of the surplus lines tax, if the nonpayment is reported and the outstanding tax is immediately paid. It also exempts certain political subdivisions, or a consortium of such political subdivisions, from the surplus lines tax requirements. According to a Department of Insurance official, these two provisions would have no fiscal impact because this bill simply codifies the Department's current practices.

Fiscal effect

Under current Ohio law, there is a 5% tax levied on surplus lines insurance. This tax is unrelated to the 1.4% tax on gross premiums paid to domestic and foreign insurers regulated by the Department of Insurance. The surplus lines insurance tax raised over $28 million in FY 2010 for the GRF.

The bill would remove the Department of Insurance from direct oversight of this tax in the case of surplus lines brokers located in other states, substituting the oversight of a multistate compact in which the Department would be authorized to participate. There could be a gain or loss in revenue under the surplus lines insurance tax as a result, but LSC staff are unsure which is the more likely result. The bill also exempts revenues other than premiums from the surplus lines tax base. This provision would decrease surplus lines tax revenue, but LSC staff are uncertain whether the combined effect of these provisions would be to increase or decrease receipts.

The bill may also decrease revenue from fees charged to surplus lines brokers whose home state is not Ohio. Unauthorized insurance and surplus lines brokers would only have to comply with their home state's law regarding any licensure requirements. Any decrease in fee collections would affect amounts allocated to the Department of Insurance Operating Fund (Fund 5540) and the GRF.

HB0122IN.docx / lb