

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 2 (Third Edition)

SHORT TITLE: Protect Health Care Freedom.

SPONSOR(S): Representatives Stam, Barnhart, Hollo, and Murry

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
EFFECTIVE DATE: Upon Enactment					

BILL SUMMARY:

The legislation proposes to prohibit the requirement that an individual must obtain and maintain health insurance coverage as set forth in Public Law (P.L.) 111-148. It provides for a private right of action for any individual aggrieved by a violation of the statutory protection of health care freedom. And, it requires North Carolina’s Attorney General to bring or defend any State or federal action or proceeding on behalf of the residents to enforce that statutory protection.

ASSUMPTIONS AND METHODOLOGY:

This fiscal analysis focuses on the potential use of State General Funds that may be required by the Attorney General’s Office to bring or defend any State or federal action or proceeding on behalf of NC residents to enforce their statutory protection of health care freedom.

Background

Immediately after the Patient Protection and Affordable Care Act was signed into law on March 23, 2010, 13 Attorneys General filed a lawsuit against the U.S. Department of Health and Human Services, U.S. Department of Treasury and the U.S. Department of Labor alleging the Health Care Reform law signed by the President was unconstitutional.

The amended complaint currently features 26 state plaintiffs; additionally, the National Federation of Independent Business (NFIB) joined the lawsuit as a co-plaintiff on behalf of its members nationwide.

The lawsuit, filed in the federal court's Northern District of Florida on March 23, alleges the following:

- (1) The new law infringes upon the constitutional rights of Floridians and residents of the other states by mandating all citizens and legal residents have qualifying health care coverage or pay a tax penalty;
- (2) By imposing such a mandate, the law exceeds the powers of the United States under Article I of the Constitution; and
- (3) The tax penalty required under the law constitutes an unlawful direct tax in violation of Article I, sections 2 and 9 of the Constitution.

Attorney General

As noted above, the legislation states that the Attorney General shall have the duty to bring or defend a State or federal action or proceeding on behalf of the residents of North Carolina to enforce the provisions of new G.S. 58-49.1 which would opt the state out of federally mandated insurance.

Fiscal impact of representation in litigation or administrative proceeding depends on factors such as the number of named parties, the legal complexity of the claim, the location of the action or proceeding, the number of expert reports required, and the duration of the proceeding. The legislation contemplates representation of either individual uninsured residents of North Carolina (approximately 1.6 million people) or the state of North Carolina, or its agents, in an unspecified legal forum, as defense counsel or plaintiffs' counsel.

The North Carolina Attorney General's office offers that individual representation would require significant attorney resources. For example, in a hypothetical situation where half of the uninsured residents requested representation in the event of an IRS tax claim effective 2014, with an estimate of 10 hours of Department of Justice (DOJ) attorney time per case, the total of 800,000 clients could result in 8 million hours of attorney staff time. DOJ attorneys work an average of 2,000 hours per year.

The Fiscal Research Division (FRD) believes the analysis offered by the Attorney General's Office to be excessive. Assuming that individual representations are required, FRD believes that

the litigation would quickly become a class action suit. FRD cannot, however, estimate the fiscal impact at this time. State representation of an agency or class of state residents could result in less attorney hours than with individual representation, and thus less fiscal impact, but could increase in complexity, scope and duration, especially when both parties are units of government. For example, litigation between the state of North Carolina and other southeastern states regarding the Low-Level Radioactive Waste Compact recently concluded after almost 10 years of litigation. The result favored North Carolina in that it assessed no penalties for withdrawing from the compact, but required thousands of hours of in-house DOJ attorney time and \$344,730 in expert witness and legal fees before the US Supreme Court.

Assuming, however, that the Attorney General meets its statutory duty by participating in the federal lawsuit which currently features 26 state plaintiffs that are challenging the federal law, there are two mechanisms by which North Carolina can participate in this suit: the first would be to request the Florida Attorney General to file a motion requesting the addition of North Carolina to the suit, and the second would be for North Carolina to file an independent motion to intervene in the lawsuit. According to the Florida Office of the Attorney General, Florida is not requiring any cost-sharing from other states involved in this suit, but does allow for optional contributions. To date, Florida has capped their outside counsel expenses at \$50,000, and has capped any other state's optional contribution at \$5,000. Should the counsel expenses require an increased cap, the other states may contribute more, but there is no mandatory contribution. The petitioners have set up a website: <http://www.healthcarelawsuit.us/> for more information on their pursuit.

SOURCES OF DATA: North Carolina Attorney General

TECHNICAL CONSIDERATIONS: None

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DATE: February 7, 2011



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