

DEPARTMENT OF TAXATION 2014 Fiscal Impact Statement

1. **Patron** Kenneth C. Alexander
3. **Committee** Passed House and Senate
4. **Title** Insurer Insolvencies; Refunds of Surplus Funds

2. **Bill Number** SB 70
House of Origin:
 Introduced
 Substitute
 Engrossed
- Second House:**
 In Committee
 Substitute
 X **Enrolled**

5. Summary/Purpose:

This bill would transfer administration of the refund process for surplus funds paid to the Virginia Life, Accident and Sickness Insurance Guaranty Association ("Guaranty Association") from the State Corporation Commission ("SCC") to the Department of Taxation ("the Department"). This bill would require the Guaranty Association to pay any remaining surplus funds to the Department for deposit with the State Treasurer for credit to the General Fund. This bill would require any member insurer contending that it is entitled to recover assessment costs that were not otherwise amortized and offset from any portion of the surplus refunded to the General Fund to present evidence of such entitlement to the Department.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

7. No Fiscal Impact (See Line 8.)

8. Fiscal implications:

Administrative Cost

The Department considers implementation of this bill as routine, and does not require additional funding.

Fiscal Impact

This bill would have no impact on General Fund revenues because it simply transfers the administration of Guaranty Association refund payments from one state agency to another. This bill does not change the amount of such refunds or otherwise alter the refund process.

9. Specific agency or political subdivisions affected:

State Corporation Commission
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

The Guaranty Association is a nonprofit legal entity that protects Virginia residents who are holders of life and health insurance policies, and individual annuity contracts from a member insurer in the event that such member insurer becomes impaired or insolvent. The Guaranty Association is composed of all insurers licensed to sell life insurance, accident and health insurance, and individual annuities in Virginia.

In order to provide the funds necessary to carry out the powers and duties of the Guaranty Association, the Guaranty Association's board of directors is required to assess the member insurers, separately for each account, at such time and for any amounts as the board of directors finds necessary. There are two classes of assessments that the board of directors is authorized to require member insurers to pay:

1. Class A assessments may be called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized whether or not related to a particular impaired or insolvent member insurer.
2. Class B assessments may be called for to the extent necessary to carry out the powers and duties of the Guaranty Association with regard to an impaired or insolvent member insurer. The Guaranty Association is required to issue a certificate of contribution to each insurer paying a Class B assessment for the amount of the assessment paid, excluding interest penalties.

If the board of directors determines that it has surplus funds on hand with respect to an insolvency, the Guaranty Association is required to use the surplus funds to reimburse member insurers for assessment costs that are not otherwise amortized and offset pursuant to *Va. Code* § 38.2-1709 and pay the remaining surplus funds to the SCC for deposit with the State Treasurer for credit to the General Fund. Within 90 days of making payment of surplus funds to the SCC, the Guaranty Association is required to notify its member insurers of such payment. If any member insurer contends that it is entitled to any portion of the surplus refunded to the General Fund in order to recover assessment costs that were not otherwise amortized and offset, then the member insurer may present evidence of such entitlement to the State Corporation Commission. If the SCC determines that a member insurer is entitled to a portion of the surplus funds, then the State Treasurer is required to pay to the member insurer the sum that the SCC determines that the member insurer is entitled to receive.

Guaranty Fund Assessment Tax Credit

An insurer that is a member of the Guaranty Association and that receives an assessment from such association may show a certificate of contribution as an asset on its financial income statement. Such amounts must be amortized over the 10 calendar years following the year the contribution was paid, in an annual amount equal to 10 percent of the amount of the contribution. The member insurer may then claim the Guaranty Fund Assessment Tax Credit annually over a 10-year period in an amount equal to the amortized amount for each year. A member insurer must pay to the Department any sums for which a certificate of contribution has been issued that have been amortized by contributing insurers and offset against the Insurance Premiums License Tax, and subsequently refunded to the member insurer from any surplus funds.

Administration of the Insurance Premiums License Tax

During the 2011 Session, the Virginia General Assembly enacted Senate Bill 1124, which transferred administration of the Insurance Premiums License Tax from the SCC to the Department. The Department became responsible for processing tax returns, handling related payments and billing, customer service functions, and collections and audit duties. The Department also became responsible for administering the retaliatory cost assessment on certain foreign insurance companies, as well as the retaliatory costs tax credit for domestic insurance companies.

The SCC continued to be responsible for the licensing of insurance companies, administering the refund process for surplus funds paid to the Guaranty Association, and administering assessments for the Fire Programs Fund, the Dam Safety, Flood Prevention and Protection Assistance Fund, the program to reduce losses from motor vehicle thefts, and the program to reduce losses from insurance fraud.

Proposed Legislation

This bill would transfer administration of the refund process for surplus funds paid to the Guaranty Association from the SCC to the Department. This bill would require the Guaranty Association to pay any remaining surplus funds to the Department for deposit with the State Treasurer for credit to the General Fund. This bill would require any member insurer contending that it is entitled to recover assessment costs that were not otherwise amortized and offset from any portion of the surplus refunded to the General Fund to present evidence of such entitlement to the Department. If the Department determines that a member insurer is entitled to a portion of the surplus funds, the State Treasurer would pay the member insurer the sum that the Department determines that the member insurer is entitled to receive.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/21/2014 MTH
SB70FER161