



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 541 through 545 (as passed by the Senate)
Sponsors: Senator Dave Robertson (S.B. 541)
 Senator Bruce Caswell (S.B. 542)
 Senator Mike Nofs (S.B. 543)
 Senator Tom Casperson (S.B. 544)
 Senator Mark C. Jansen (S.B. 545)
Committee: Reforms, Restructuring and Reinventing

Date Completed: 11-25-13

RATIONALE

The Publicly Funded Health Insurance Contribution Act sets a relative ceiling on the amount that a public employer (such as a municipality or school district) may contribute to its medical benefit plan for employees or elected public officials. A local unit of government may exempt itself from the Act's requirements, and extend an exemption, by a two-thirds vote of the governing body.

Except as otherwise provided, a public employer may not pay more than a total amount equal to the sum of the following, subject to annual adjustments based on the U.S. consumer price index: \$5,500 times the number of employees with single-person coverage; \$11,000 times the number of employees with individual-and-spouse coverage; and \$15,000 times the number of employees with family coverage. A public employer may allocate payments for its medical benefit plan among employees and elected public officials as it sees fit. As an alternative to the dollar-amount limit, a public employer may elect an 80% limit on its contributions to employee medical benefit plans.

The Act also specifies how to calculate an employer's expenditures under a medical benefit plan and the number of employees, and what constitutes a medical benefit plan.

Evidently, the \$11,000 cap for individual-and-spouse coverage results in higher costs for those policy holders when compared to the costs for other policy holders. Additionally, due to the Department of Treasury's interpretation of some of the Act's provisions, some people believe that those provisions are not specific enough with regard to: 1) calculating expenditures and the number of employees for purposes of the Act; 2) what constitutes a medical benefit plan; 3) when a local government must vote to exempt itself from the Act; and 4) when a public employer must elect an 80% contribution limit on contributions. Therefore, it has been suggested that the Act should include more specificity with regard to these provisions and a higher cap for individual-and-spouse coverage.

CONTENT

The bills would amend the Publicly Funded Health Insurance Contribution Act to modify the requirements for public employer-funded health care benefit plans.

Senate Bill 541 would amend the definition of "medical benefit plan" to exclude plans that are available only upon retirement or separation from service.

Senate Bill 542 would amend the requirements regarding the cap on the dollar limit that a public employer may pay toward health care costs. The bill would:

- Increase the multipliers used to calculate the cap.
- Include individual-plus-one-nonspouse-dependent coverage within family coverage for cap calculation purposes.
- Exempt certain employer payments from cap calculations.
- Exclude employees who declined coverage from cap calculations.

Senate Bill 543 would amend requirements that allow a public employer to opt for a percentage limit on its medical plan contributions. The bill would require a majority vote of the governing body before the beginning of the medical plan coverage year.

Senate Bill 544 would exempt from the Acts contribution limits a contract or other agreement that was in effect for one or more employees, rather than a group of employees, on September 27, 2011, until the contract expired.

Senate Bill 545 would modify a provision that allows a local unit of government to exempt itself from the Act's requirements, by requiring that a vote of the governing board take place before the beginning of the medical benefit plan coverage year.

Except for Senate Bill 545, each bill states that it "clarifies the original intent of the legislature", and "is curative and applies retroactively".

Senate Bill 541

Section 2 of the Act defines "medical benefit plan" and states that the term does not include benefits provided to individuals retired from a public employer. The bill also would exclude a public employer's contributions to a fund used for the sole purpose of funding health care benefits available to public employees or elected public officials only upon retirement or separation from service.

The bill would define "medical benefit plan coverage year" as the 12-month period after the effective date of the contractual or self-insured medical coverage plan that a public employer provides to its employees or public officials.

The bill states, "This amendatory act clarifies the original intent of the legislature that the costs of a public employer's medical benefit plan do not include the public employer's contributions to a health care fund for benefits that are available to an employee or elected official only upon retirement or separation from service. This amendatory act is curative and applies retroactively."

Senate Bill 542

Under Section 3, except as otherwise provided by the Act, if a public employer offers or contributes to a medical benefit plan for its employees or elected public officials, the public employer is subject to a limit on the total dollar amount it may pay toward the annual costs or illustrative rate and any payments for reimbursement of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts used for health care costs.

For a medical benefit plan coverage year beginning on or after January 1, 2012, the limit is the sum of the following (subject to annual adjustments based on the medical care component of the U.S. consumer price index):

- \$5,500 times the number of employees with single-person coverage.
- \$11,000 times the number of employees with individual-and-spouse coverage.
- \$15,000 times the number of employees with family coverage.

Under the bill, family coverage would include individual-plus-one-nonspouse-dependent coverage.

For a medical benefit plan coverage year beginning during 2013, the multiplier would be \$13,455 for employees with individual-and-spouse coverage.

The number of elected officials, as well as public employees, would be included in the calculations. Also, for purposes of calculating the limit, the bill provides that "employee or elected public official" would not include a public employee or elected official who declined the medical benefit plan offered or contributed to by the public employer.

In addition, the bill provides that a public employer's total annual costs of all medical benefit plans it offered or contributed to for its employees and elected officials under Section 3 would not include any of the following:

- A payment of the public employer to an employee or elected official in lieu of medical benefit plan coverage.
- Any amount that the public employer paid directly or indirectly for the assessment levied under the Health Insurance Claims Assessment Act.
- Any additional amount the public employer was required to pay as a fee or tax under the Federal Patient Protection and Affordable Care Act.

The bill states that it "clarifies the original intent of the legislature that the term 'family coverage' includes individual-plus-1-nonspouse-dependent coverage; that a public employee or elected official who declines the public employer's medical benefit plan coverage is not an employee or elected public official for purposes of calculating the public employer's maximum total annual medical benefit plan costs; and that a public employer's medical benefit plan costs do not include payments to employees in lieu of medical benefit plan coverage or assessments levied pursuant to the health insurance claims assessment act...". The bill also states, "These amendments are curative and apply retroactively."

Senate Bill 543

Section 4 allows a public employer to elect to comply with a percentage limit on its medical benefit plan contributions, instead of complying with the requirements in Section 3, for a medical benefit plan coverage year. (Although this applies to a public employer other than the State, the designated State official for employees of the judicial branch, Senate, House, Legislative Council, State classified service, or executive branch, may elect to comply with Section 4 instead of Section 3 as to medical benefit plans for State employees and officers.) Under Section 4, a public employer may not pay more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials.

The Act requires a vote of the public employer's governing body for the election under Section 4. The bill would require a vote each year before the beginning of the medical benefit plan coverage year.

The bill provides that, for purposes of Section 4, a public employer's total annual costs of its medical benefit plan would not include any of the following:

- A payment by the public employer to an employee or elected public official in lieu of medical benefit plan coverage.
- Any amount that the public employer paid directly or indirectly for the assessment levied under the Health Insurance Claims Assessment Act.
- Any additional amount the public employer was required to pay as a fee or tax under the Patient Protection and Affordable Care Act.

The bill states, "This amendatory act clarifies the original intent of the legislature that a public employer's medical benefit plan costs do not include payments to employees in lieu of medical benefit plan coverage or assessments levied pursuant to the health insurance claims assessment act... This amendatory act is curative and applies retroactively."

Senate Bill 544

Under Section 5, if a collective bargaining agreement or other contract that was inconsistent with Sections 3 and 4 was in effect for a group of employees of a public employer on the effective date of the Publicly Funded Health Insurance Contribution Act, the requirements of those sections do not apply to that group of employees until the contract expires. The bill would refer to one or more employees, and an employee covered by the contract, rather than a group of employees.

Any agreements executed after September 15, 2011, may not include terms that are inconsistent with the requirements of Sections 3 and 4. The bill would change this date to September 27, 2011 (the effective date of the Act).

The bill states, "This amendatory act clarifies the original intent of the legislature that September 27, 2011 is the date on and after which a new contract must comply with this act. This amendatory act is curative and applies retroactively."

Senate Bill 545

Section 8 allows a local unit of government to exempt itself from the Act's requirements by a two-thirds vote of its governing body each year. Section 8 also requires a two-thirds vote to extend an exemption to a new year.

The bill would require an exemption or extension vote to take place before the beginning of the medical benefit plan coverage year.

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ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Senate Bill 541 would prevent payments into 401k retirement accounts from being used in calculations for an employer's maximum contribution. Reportedly, the Department of Treasury interprets the current law as requiring these payments to be included in these calculations, and some people disagree with this approach.

Supporting Argument

Senate Bill 542 would eliminate a disparity that exists between individual-and-spouse coverage and individual or family policies. Reportedly, individual-and-spouse coverage policies are more expensive than individual or family policies. For example, policies for family coverage reportedly cost policy holders approximately \$80, while two-person policies cost approximately \$240. Evidently, this disparity in out-of-pocket costs could be equalized if the employer's contribution limit were increased from \$11,000 to \$13,455.

Supporting Argument

Individual-plus-one-nonspouse-dependent coverage should qualify as family coverage, and Senate Bill 542 would specifically require this. Reportedly, the Department of Treasury does not recognize individual-plus-one-nonspouse-dependent coverage as family coverage.

Supporting Argument

An employee or elected public official who declines a public employer's medical benefit plan should not be included for purposes of calculating the employer's dollar contribution limit for

medical benefit plan costs. Reportedly, the Department of Treasury requires individuals who decline coverage to be included in calculations.

Additionally, public employer payments to employees or officials in lieu of medical benefit plan coverage should not be included in calculating the employer's total annual medical benefit plan costs. The Department evidently includes payments in lieu of coverage for purposes of this calculation.

Senate Bill 542 would address these issues.

Supporting Argument

Reportedly, there is some confusion as to when a public employer can vote to exempt itself from the Act's requirements, and when a governing body can vote to elect the 80% limitation for contributions. The Act does not specify when either vote must take place. Senate Bill 543 would clarify that the public employer could vote before the beginning of the medical benefit plan coverage year. Similarly, Senate Bill 545 would require a local unit of government to vote before the medical benefit plan coverage year began.

The bills also would require a vote each year. Since boards, governing bodies, public sentiment, and economic circumstances change, public employers and municipalities should annually revisit these issues to see ensure that an election was indeed in the municipality's best interest.

Supporting Argument

Evidently, with respect to agreements or contracts that are inconsistent with the Act, there is confusion about whether a "group of employees" includes a "group" of one employee. Specifically, it is unclear whether a superintendent who is under a collective bargaining agreement is exempt from the Act's medical plan limitations if the agreement conflicts with the Act's requirements. Senate Bill 544 would address this by specifying that a conflicting agreement in effect for *one or more* employees would not be subject to the limitations in the Act until the contract expired.

Opposing Argument

Excluding payments in lieu of medical benefits from calculations for contribution limits would create a loophole. If a public employer were not interested in keeping costs down, it could provide employees with payments in lieu of coverage that exceeded the limits imposed under the Act, and the employee could keep any excess. For example, if an employee's medical benefit plan contribution were capped at \$15,000, the employer could provide the employee with a \$20,000 payment in lieu of coverage. The employee then could purchase a \$15,000 plan on his or her own, and keep the remaining \$5,000.

Response: Local governments should be expected to make rational economic decisions. There is no indication that local governments would engage in this kind of abuse. If, however, they did abuse the system, the Legislature could revisit this issue and put safeguards in place to prevent it.

Also, it is unlikely that employees could find benefit plans that cost less than the plans that their employers offered, so it would be against the interests of employers and employees to engage in this type of behavior.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

Senate Bill 541

The bill would have no fiscal impact on State or local government.

Senate Bill 542

Based on 2011 data, there are an estimated 49,500 employees enrolled in a State health plan. Of that number, an estimated 7,900 employees are enrolled in an individual-and-spouse health care plan. The bill would increase the cap on the State's portion for those individuals enrolled in an individual-and-spouse plan from the current \$11,000 annually to \$13,455 annually. Although the State's currently negotiated contracts require the State to pay up to a maximum of 20% of an employee's health care costs instead of the capped dollar amount, if the State and employee unions negotiate to pay the capped dollar amount in the future, the State would incur higher costs.

Using the estimated figure of 7,900 employees currently enrolled in an individual-and-spouse plan, the proposed change would increase the State's contribution by \$2,455 per employee or a total of \$19.4 million annually. For the State, the GF/GP cost is estimated at 53% of the gross cost, or \$10.3 million annually.

Comprehensive data do not exist to accurately calculate the potential cost to local government, school districts, and public higher education employers from this bill. However, for a unit of government that has chosen to pay the capped dollar amount instead of the 80% of premium cap, the bill would increase the costs for the public employer by \$2,455 per employee enrolled in an individual-and-spouse plan.

Senate Bill 543

The proposed change to exclude payments to an employee in lieu of medical coverage from the dollar and percentage limits on a public employer's total contributions could result in a higher amount paid by the employer. The exclusion of these payments from the employer's dollar and percentage limits could result in the employer having to pay a higher amount for health care coverage for its employees. The amount of these higher payments is indeterminate and dependent on the number of affected employees and the amount of the payments in lieu of medical benefits.

Senate Bills 544 and 545

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.