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Senate Bills 541 through 545 (as enacted)

PUBLIC ACTS 269-273 of 2013

Sponsor: 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)

Senate Committee: Reforms, Restructuring and Reinventing

House Committee: Financial Liability Reform

Date Completed: 4-3-14

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.

Originally, the Act set the following limits on the total dollar amount of a public employer's annual contribution toward employee health care benefits, 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 its payments for medical benefit plan costs 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 an employer's expenditures under a medical benefit plan and the number of employees are to be calculated, and what constitutes a medical benefit plan.

Evidently, the \$11,000 cap for individual-and-spouse coverage resulted 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 several of the Act's provisions, some people believed that the statute was not specific enough with regard to: calculating expenditures and the number of employees for purposes of the Act; what constitutes a medical benefit plan; when a local government must vote to exempt itself from the Act; or when a public employer must elect an 80% contribution limit on contributions. Therefore, it was 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 amended the Publicly Funded Health Insurance Contribution Act to modify the requirements for public employer-funded health care benefit plans.

Senate Bill 541 amended the Act to do the following:

- Exclude from the definition of "medical benefit plan" plans that are available only upon retirement or separation from service.**

- Indicate that the term "medical benefit plan costs" excludes an employer's payment to an employee or elected official in lieu of medical benefit plan coverage.
- Include various amounts in "medical benefit plan costs".
- Define "medical benefit plan coverage year".

Senate Bill 542 amended the requirements regarding the dollar limit on the amount that a public employer may pay toward health care costs. Specifically, the bill does the following:

- Increases the dollar amount multiplier for the category of employees with individual-and-spouse coverage.
- Includes individual-plus-one-nonspouse-dependent coverage in that category.
- Includes elected public officials in each of the categories subject to a dollar amount multiplier.
- Excludes employees and elected officials who decline coverage from calculation of an employer's cap.

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

Senate Bill 544 exempted from the Act's 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 expires.

Senate Bill 545 modified 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.

Senate Bills 541, 542, and 544 each states that it "clarifies the original intent of the legislature", and indicates that all or some of the amendments are curative and apply retroactively.

All of the bills took effect on December 30, 2013.

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 excludes 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 states that "medical benefit plan costs" does not include a payment by the public employer to an employee or elected public official in lieu of medical benefit plan coverage. For a medical benefit plan coverage year beginning after January 1, 2014, the term includes all of the following:

- Any amount that the public employer pays directly or indirectly for the assessment levied pursuant to the Health Insurance Claims Assessment Act.
- Insurance agent or company commissions.
- Any additional amount the public employer is required to pay as a fee or tax under the Federal Patient Protection and Affordable Care Act, as amended by the Federal Health Care and Education Reconciliation Act.

The bill defines "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 and is curative and retroactive as to the exclusion of funding for health care benefits that are available only upon either retirement or separation from service from the definition of medical benefit plan and as to the exclusion of payments in lieu of medical benefit plan coverage from medical benefit plan costs."

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.

Originally, for a medical benefit plan coverage year beginning on or after January 1, 2012, the limit was 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.

Subject to the increase described below, the bill retains these amounts but includes individual-plus-one-nonspouse-dependent coverage in the category of employees with individual-and-spouse coverage. The bill also refers to employees and elected public officials in each of the categories.

For a medical benefit plan coverage year beginning during 2014, the bill increases the multiplier to \$12,250 for employees and elected public officials with individual-and-spouse coverage or individual-plus-one-nonspouse-dependent coverage, and requires the multiplier to be adjusted each year as provided above.

For purposes of calculating an employer's limit, the bill specifies that "employee or elected public official" does not include a public employee or elected official who declines the medical benefit plan offered or contributed to by the public employer.

The bill states that it "clarifies the original intent of the legislature 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". 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 requires a vote each year before the beginning of the medical benefit plan coverage year.

Senate Bill 544

Originally, 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 Act, the requirements of those sections did not apply to that group of employees until the contract expired. The bill retains this provision but refers to one or more employees, and an employee covered by the contract, rather than a group of employees.

Under the bill, any agreements executed after September 27, 2011 (the effective date of the Act) may not include terms that are inconsistent with the requirements of Sections 3 and 4. The Act originally contained this provision but referred to September 15, 2011.

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 requires 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 will prevent payments into 401k retirement accounts from being used in calculations for an employer's maximum contribution. Reportedly, the Department of Treasury interpreted the original law as requiring these payments to be included in these calculations, and some people disagreed with this approach.

The bill also clarifies that medical benefit plans do not include employers' payments that fund health care benefits available only upon retirement or termination of employment.

Supporting Argument

Senate Bill 542 eliminates a disparity that existed 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 less than \$100, while two-person policies cost more than \$200. Increasing the employer's contribution limit from \$11,000 to \$12,250 should equalize out-of-pocket costs.

The bill also includes individual-plus-one-nonspouse-dependent coverage along with individual-and-spouse coverage. Evidently, the Department of Treasury did not recognize individual-plus-one-nonspouse-dependent 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, however, the Department of Treasury required individuals who declined 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 included payments in lieu of coverage for purposes of this calculation.

Senate Bills 541 and 542 address these issues.

Supporting Argument

Reportedly, there was some confusion as to when a public employer could vote to exempt itself from the Act's requirements, and when a local governing body could vote to elect the 80% limitation for contributions. The Act did not originally specify when either vote must take place. Senate Bill 543 clarifies that a public employer's vote to elect the 80% limit must take place before the beginning of the medical benefit plan coverage year. Similarly, Senate Bill 545 requires a local unit of government to vote on an exemption before the medical benefit plan coverage year begins.

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 ensure that an election remains in their best interest.

Supporting Argument

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

Opposing Argument

Excluding payments in lieu of medical benefits from calculations for contribution limits will create a loophole. If a public employer is not interested in keeping costs down, it can provide employees with payments in lieu of coverage that exceed the limits imposed by the Act, and the employee can keep any excess. For example, if an employee's medical benefit plan contribution is capped at \$15,000, the employer can provide the employee with a \$20,000 payment in lieu of coverage. The employee then can 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 will engage in this kind of abuse. If they do abuse the system, however, the Legislature can revisit this issue and put safeguards in place to prevent it.

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

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 541

The bill will 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 increases the cap on a public employer's portion for those individuals enrolled in an individual-and-spouse plan from the \$11,000 annually to \$12,250 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 negotiated 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 change would increase the State's contribution by \$1,250 per employee or a total of \$9.9 million annually. For the State, the GF/GP cost is estimated at 53% of the gross cost, or \$5.2 million annually.

Comprehensive data do not exist to accurately calculate the 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 will increase the costs for the public employer by \$1,250 per employee enrolled in an individual-and-spouse plan.

Senate Bills 543, 544, and 545

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

Fiscal Analyst: Joe Carrasco