

STORAGE NAME: h0623.ca

DATE: March 29, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 623

RELATING TO: Local Governments/State Group Health Insurance

SPONSOR(S): Representative Spratt and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS (PRC) YEAS 4 NAYS 1
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3) GENERAL APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates an unnumbered section of the Florida Statutes authorizing the governing body of a municipality, the governing body of a county, or the school board of a school district, to contract annually with the Department of Management Services for participation in the State Employees' Group Health Insurance Program (**State Program**), under the same terms and conditions as are provided to state officers and employees.

This bill provides an effective date of July 1, 2000.

There is a potentially significant fiscal impact.

The Committee on Governmental Operations adopted one amendment that is traveling with the bill. As indicated in the "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES" section the strike-everything amendment provides for participation in the state group health insurance program by small counties and cities, and district school boards in small counties; provides for application, prerequisites and conditions for participation; provides for the adoption of rules; provides for the request of a written determination letter and favorable private letter rulings from the Internal Revenue Service and requires notice to the Speaker and President of the rulings; and clarifies that if a favorable letter ruling is not received by the IRS, this act does not take effect. The strike everything amendment is traveling with the bill at the request of the sponsor.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

As authorized by s. 110.123, F.S., the Division of State Group Insurance (DSGI), within the Department of Management Services (DMS), is responsible for administering the State Employees' Group Health Insurance Program (State Program). This program offers group health insurance benefits to active state employees, state retirees, survivors, COBRA eligible individuals, and their eligible dependents. These benefits are offered to employees and retirees of state government and the state university system. There are approximately 160,000 employees enrolled in DSGI health plans at present. The current system provides for a fixed employee contribution (i.e., premium) for health care coverage, regardless of the plan chosen by the employee.

C. EFFECT OF PROPOSED CHANGES:

If enacted, this bill would allow the governing body of a municipality, county, and/or school district to contract with DMS for participation in the State Program, under the same terms and conditions as are currently provided to state employees and officers.

ISSUES:

This bill raises a number of non-trivial issues that should be thoroughly addressed **before** enactment of this legislation:

Compliance with applicable State and Federal Regulations

It appears that the proposed legislation will make the State Employees' Group Health Insurance Program a multiple employer welfare arrangement (MEWA), under Florida Statutes. The term MEWA is defined, in pertinent part, as an employee welfare benefit plan or any other arrangement, which is established or maintained for the purpose of offering or providing health insurance benefits to the employees of two or more employers or their beneficiaries. The only exemptions from this definition are with respect to a MEWA that provides fully insured benefits, or an arrangement that is exempt from State insurance regulation under the provisions of ERISA. Neither of these exemptions is available to the State's Health Plan.

While this problem might well be resolved by amending s. 624.437, F.S., the statute that defines MEWAs, substantial thought should be given to the rationale behind the statutory

basis of the rules and regulations relating to a MEWA and to the relationship between that rationale and the situation created by enacting this legislation. Assuming that the statutes and regulations that govern MEWAs exist for a valid public purpose, we should at least understand, more thoroughly than we do now, the impact of creating such an entity outside of the structure otherwise used to govern them.

The existing State Program is also operated under Section 125 of the Internal Revenue Code (IRC) governing cafeteria plans. It is clear that, to the extent municipality, county, and school district employees **are not** state employees, they are ineligible to participate in the state cafeteria plan, per se. It is not clear, at this time, whether there is a way to include municipality, county, and school district employees (and their eligible dependents) that would be permissible under Section 125 IRC. **Unless we are absolutely clear about the approach we are going to use to provide coverage to municipality, county, and school district employees, and unless we review that approach through appropriate IRS channels, we place the tax-exempt status of the State Program in jeopardy.**

Demographics

The issue of “how many new enrollees could we expect” is an important one. One way of assessing this is to look at the state retirement system. Eligible employees of all county and some city government entities have been included in the state’s retirement system since December of 1970.

To be included in the retirement system database, any county or city employee must be in a “regular established position” -- not an other-personal-service or contracted employee, and employed in the position for more than six months. The most recent complete state fiscal year data has the following statistics:

Type of Government Entity	Number of Employees	Percentage of Employees
County Government	124,993	20.82%
County School Board	281,704	46.92%
Selected City and Special Distr.	25,327	4.22%
Community College	16,295	2.71%
State Govt. and University	152,049	25.33%
Total	600,368	100.00%

As shown, the total number of county and some city employees is nearly three times the number of state and university employees in the State Retirement System. There is no information available on the number of city employees who are not in the state retirement system, nor the number of dependents per county or city employee. There is no way to know, a-priori, the number of cities, counties, and school district that would want access to the state plan, the total number of employees that would produce, or the risk profiles of those populations. These data should suggest, however, that it might be possible to completely subsume the existing State Program with new enrollees from these entities.

Administrative disconnection

The current State Program infrastructure is not designed for and is completely devoid of administrative linkages between the Division and non-state entities. The lack of administrative connection between the State and these entities presents many difficulties with respect to administrative activities such as, enrollment maintenance and coordination,

eligibility determination, and premium collection. These will all have to be studied and worked out.

Eligibility determination

The eligibility determination criteria for state government and university employees is probably different than for at least some of the entities that would participate. It is unclear how this issue would be handled if the State Program were extended to the employees of these entities and their eligible dependents. These criteria will all have to be studied and worked out.

Timing

This bill provides for a July 1, 2000, implementation date. The scope of work that needs to be done, even assuming that the MEWA and Section 125 IRC issues turn out to be benign, is considerable. Given the scope and level of unknowns involved in this bill, the proposed implementation date is unrealistic.

Retirees of the county and city entities

If the State Program were extended to active employees and their eligible dependents of city, county, and school district entities, would retirees and their dependents of these entities qualify for the same health insurance benefits?

Costs

There are many uncertain factors associated with the idea of extending health insurance benefits to city, county, and school district employees and their eligible dependents and the outcome of these factors will impact the administrative costs borne by the state and, potentially, the premium costs borne by the state and its enrollees.

- First, DSGI has no information on how many of these entities would actually participate;
- Second, even if DSGI had information on the number of entities that would likely participate, the participation rate of enrollees within these entities remains unknown, as does their likely plan choice (e.g., PPO or HMO) and contract status (e.g., Individual or Family coverage);
- Third, DSGI can not know, a-priori, the risk profile which these entities will be bringing to the table; and
- Finally, there is no reasonable assumptions DSGI can make regarding whether or not the level of service utilization and health care costs of these would be the same as, or different from, that of state employees. This uncertainty creates much difficulty in estimating the cost impact of this proposal for the various health insurance plans.

Summary

A decision to extend the State Program to include city, county, and school district employees, and their eligible dependents, is a significant one that could create major repercussions for years to come. Due to the significantly large and complex nature of this issue, DSGI believes that a one-year feasibility study is the best approach to take. Such a study could be expected to provide information related to uncertainties outlined above, as well as implementation plans for whatever options the study ultimately recommends.

DSGI recommends that the Legislature support a study by providing the funding and authority necessary for it to adequately assess the problem and evaluate a potential solution. DSGI would report study results back to the Legislature in time for the 2001 Legislative Session.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The financial outlook for the State Employees' Group Health Self-Insurance Trust Fund, in recent past years, projected cash deficiencies in the Trust Fund. Legislative actions, such as premium rate increases, prescription drug co-payment increases and HMO physician office visit co-payment increases, along with resulting administrative policies, have provided limited financial stability to the Trust Fund. It is estimated that the Trust Fund will remain solvent during the current fiscal year (1999-00) and the next fiscal year (2000-01).

This proposal has the potential to impact both the administrative costs faced by DMS in managing the existing State Program and the premiums paid by the State and its employees for health insurance coverage. The estimation of this fiscal impact depends on the final resolution of many of the uncertain factors discussed in the Effect of Proposed Changes section of this analysis. DMS, therefore, is unable to provide any reasonable estimates of the fiscal impact of this bill on the budget and the Trust Fund. The impact could, however, be substantial.

The addition of city, county, and school district employees to the State Program would require DMS to change and expand a number of current administrative processes. The fiscal impact to DMS due to the alteration and expansion of administrative activities such as enrollment maintenance and coordination, eligibility determination, premium collection and reconciliation, and plan material printing and distribution is impossible to estimate at this point, since many of these costs are volume driven and volume is unknown. Appropriation of additional FTE's to DMS would be required in order to handle those expanded processes, as well as to handle unique processes and issues related to the proposed new group of beneficiaries.

If city, county, and school district employees are added to the State Program in ways which allow their health experience to accrue against state employee experience, for rating purposes, the State and its employees could, over time, see their insurance rates increase or decrease. The rates would go up or down depending on whether or not the resulting experience from the new enrollees is significant enough to create an offset effect against the experience of the state employee population. These costs, too, are unknowable at this time. The proposal could be drafted so that the new enrollees are rated on the basis of their own experience, but that would appear to defeat the entire

purpose of making State Program coverage available to these new enrollees, if the purpose of the expansion is to allow for these enrollees to pay the presumably lower state premiums.

If this proposal itself is adopted and ultimately found to violate Section 125 of the Internal Revenue Code, or if the implementation of the proposal is found to violate Section 125 IRC, there is the strong possibility that the State Program would lose its tax-exempt status. Should this occur, the Employees' Group Health Self-Insurance Trust Fund would lose approximately \$11.5 million annually in FICA savings. In addition, participating state employees, retirees, and COBRA participants would lose approximately \$31 million annually in tax withholding savings (estimated by the Comptroller's Office, Bureau of State Payroll, spring 1999).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

If this bill is enacted into law, and should units of local government choose to participate, they would have to pay the premium cost determined by the risk pool of all employees. In the absence of paying the full costs for these benefits, the state would have to subsidize the costs through general revenue.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private providers that are now serving these city, county, and school district employees would apparently see a decline in business.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require municipalities or counties to spend funds or take an action requiring the expenditure of funds if they choose not to participate in the proposed program.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of a state tax shared with counties or municipalities.

V. COMMENTS:

Legal Issues:

This bill will conflict with existing state laws. Section 624.437, F.S., governs multiple employer welfare arrangements (MEWAs). This proposed legislation will create a MEWA but will not meet the statutory requirements placed upon MEWAs.

This bill will conflict with existing federal law or regulations. The state's health plan is designed to meet the requirements of section 125 IRC to be a qualified cafeteria plan. Because benefits are offered to employees from a qualified cafeteria plan, premiums are paid on a pre-tax basis, which benefits the state and its employees by reducing social security and federal tax liability. If the plan included several employers, as specified in this bill, then the state's plan could be disqualified.

DSGI predicts that this legislation is likely to generate litigation. Opening the plan to other employers, particularly in light of the impediments of state and federal law may result in litigation on multiple levels. Given the scope of the proposal, it is difficult to predict the source of litigation. Health care providers adversely affected by the inclusion of so many groups or affected by their exclusion from the much larger market of employees are likely to resort to litigation. The increase in covered employees will increase the number of administrative hearings challenging agency actions relating to benefits and rulemaking.

A. CONSTITUTIONAL ISSUES:

This bill does not raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g., separation of powers, access to courts, equal protection, free speech, establishment clause, impairment of contracts).

B. RULE-MAKING AUTHORITY:

The Department of Management Services and Division of State Group Insurance will likely need additional rulemaking authority to implement this proposed legislation.

C. OTHER COMMENTS:

The Florida League of Cities expresses support for this bill.

The Division of State Group Insurance does not oppose the bill, as amended, except that they request additional staffing. This issue may be addressed next session, due to the delay in implementation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on March 23, 2000, the Committee on Governmental Operations adopted a strike everything amendment to HB 623 providing for participation in the state group health insurance program by small counties, small cities, and district school boards located in small counties; providing definitions; providing for application to the division for eligibility; providing for prerequisites for participation; providing conditions for participation; providing for the adoption

of rules; providing for the request of a written determination letter and favorable private letter rulings from the Internal Revenue Service; providing for notification to the Speaker and President of the favorable or unfavorable letter rulings; and providing that if no favorable letter ruling is received from the IRS, this act shall not take effect. The strike everything amendment is traveling with the bill at the request of the sponsor.

This strike-everything amendment reads as follows:

Section 1 -- Provides the following:

- (1) Defines the following:

Department -- Department of Management Services

District School Board -- must be in a small county

Small city -- an incorporated municipality with a population not to exceed 12,500

Small county -- any county with a population not to exceed 100,000

- (2) Provides that a small county, city or district school board is eligible to participate in the state group health insurance program, per s. 110.123, F.S., and the prescription drug program, per s. 110.2315, F.S., subject to Division of State Group Insurance (DSGI) screening.
- (3) Before applying, the entity must adopt an ordinance or resolution approving of this application.
- (4) Once DSGI determines eligibility, the entity must agree to the following: minimum enrollment is for 3 years, withdrawal procedure requires one-year written notice, if coverage is terminated, the entity must wait two years before reapplying, and if an employer fails to pay the premium, the funds normally distributed to it will be deducted accordingly.

Section 2 -- Requires DSGI to adopt rules effective July 1, 2001.

Section 3 -- Requires that effective July 1, 2000, Department must request from the IRS, within 90 days of the act's passage, a written determination letter and a favorable private letter ruling, stating that the program is a facially qualified plan; requires House speaker and Senate President notice of letter; provides that if favorable letters are not received, the act will not take effect.

The companion bill, Senate Bill 414, is being considered in Senate Banking and Insurance on Monday, April 3, 2000. A proposed committee substitute is being offered. Representative Spratt has expressed a desire to conform House Bill 623 with Senate Bill 414.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jimmy O. Helms

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