

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 414

SPONSOR: Governmental Oversight and Productivity Committee, Banking and Insurance Committee, Senator Mitchell, and others

SUBJECT: State Group Health Insurance

DATE: April 17, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute would authorize any municipality that has a population of 12,500 or less, a small county with a population of 100,000 or less, school boards, and special districts to be eligible to apply for participation in the state group health insurance program and the prescription drug coverage program administered by the Division of State Group Insurance of the Department of Management Services.

A participating local government must agree to the contractual terms and conditions on enrollment, withdrawal, premium payment, and other terms and conditions set by the department.

The committee substitute specifies that the provisions of ss. 624.436-624.446, F.S., relating to the regulation of multiple-employer welfare associations by Department of Insurance, would not apply to the state group insurance program. The committee substitute requires the Department of Management Services to request a written determination letter and a favorable letter ruling from the Internal Revenue Service by October 1, 2000. The authority for local governments to participate takes effect July 1, 2001, but only if the department receives a favorable letter prior to that date. If the favorable letters are not received by July 1, 2001, such provisions will not take effect.

This bill creates section 110.1228, Florida Statutes.

## II. Present Situation:

### State of Florida State Employees' Group Health Insurance Program

Pursuant to the provisions of s. 110.123(3)(a), F.S., it is the intent of the Legislature to offer a health insurance benefit package for state employees, and to provide the coverage in the most cost-efficient manner. Employees have a choice of joining the self-insurance plan or a health

maintenance organization (HMO). Participation by individuals in the program is available to all state officers, full-time state employees, and part-time employees. Such participation is voluntary. For fiscal year 1999 - 2000, the Division of State Group Insurance estimates that the average number of participants (active employees and retirees) in the self-insurance program is approximately 95,000 and the average number of enrollees in the HMOs is 67,000. There are approximately 375,000 covered lives in the program (active employees, retirees, spouses, dependents, continuation coverage eligible individuals).

Eligible employees are defined to include all employees (full-time and part-time) of all branches or agencies of state government holding salaried positions and paid by state warrant or from agency funds and including university personnel on academic contracts. However, individuals paid from other-personal services (OPS) funding are not eligible for coverage. An enrollee is defined to mean all state officers and employees, retired state officers and employees, surviving spouses of deceased state officers and employees, and terminated employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program.

During the period of 1979 through 1999, premiums for family coverage have increased from \$69.96 to \$507.80. Presently, the state contributes approximately 77 percent of the premium and the employer contributes the remainder. The prescription drug program requires a \$7.00 co-payment for generic prescription drugs and a \$20.00 co-payment for brand prescription drugs.

### **California Public Employees' Retirement System**

The California Public Employees' Retirement System (CALPERS) is a multi-employer purchaser of health care for the State of California and presently provides health insurance to state and local governmental agencies. CALPERS is administered by a 13-member Board of Administration consisting of elected, appointed, and ex-officio members who have a fiduciary role to members. The Board has the authority to administer and hear appeals on membership and benefit issues. However, the Board does not have the authority to add, delete, or change benefits without going through the legislative process. All health plans participating in CALPERS are required to offer the same benefits. CALPERS assesses employers participating in the plan an administrative fee of 0.5 percent of their total gross monthly premium.

CALPERS is the second largest public purchaser of employee health benefits in the United States. Approximately one-third of the public agencies in California (1,258) are members of the CALPERS health program. There are approximately 1 million members that pay approximately \$1.7 billion a year in premiums. According to the National Conference of State Legislators, 15 states allow local governments to participate in the state employee health benefit plan.

### **Health Insurance for Local Governmental Units in Florida**

Section 112.08, F.S., authorizes local government units (including municipalities, counties, and school boards) to provide funds for all or part of the premium for life, health, accident, hospitalization, legal expense, or annuity insurance for the officers and employees and their dependents of the local government. However, prior to entering any contract for insurance, the local governmental unit is required to advertise for competitive bids and such contract is required to be obtained upon the basis of such bids. As an alternative, a local governmental unit may

self-insure, subject to approval based upon actuarial soundness by the Department of Insurance. Each local governmental unit that self-insures is required to contract with an insurance company or an administrator approved by the Department of Insurance to administer such a plan.

Recently, many smaller local governmental units in Florida (municipalities, counties, and district school boards) have expressed concerns regarding the availability or the affordability of health insurance coverage. In late 1999, representatives of small cities in Florida mailed 400 letters to cities with a population of less than 20,000. Approximately 28 cities expressed interest in participating in the state group health insurance program. Eleven of the 26 cities have passed local resolutions supporting legislation to allow local governments to participate in the state health insurance program.

In late 1999, the Small School District Council Consortium surveyed small school districts (population of 75,000 or less) regarding their interest in participating in the state group health insurance program. Approximately, 85 percent of the respondents supported the option to participate in the state plan.

### **Multiple Employer Welfare Arrangements**

In a letter dated February 10, 2000, from the Division of State Group Insurance legal counsel, concerns were expressed regarding local governmental units participating in the state health insurance program. According to the division, if the program was expanded to cover local governmental entities, this would make the program a multiple employer welfare arrangement (MEWA). The term, MEWA, is defined in s. 624.437, F.S., to mean an employee welfare benefit plan or any other arrangement which is established for the purpose of offering or providing health benefits, other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries. In order to operate, maintain or establish a MEWA, a certificate of authority must be obtained from the Department of Insurance. A MEWA must be a nonprofit entity and must be established by a trade association and may not combine member employers from disparate trades. MEWAs must also meet specific financial requirements and submit certain financial and other reports to the Department of Insurance. The legal counsel concluded that the Insurance Code would need to be amended to allow the state program to operate a MEWA or exempt the state program from the MEWA requirements.

### **Internal Revenue Service Cafeteria Plan Rules**

A cafeteria plan, as defined under Section 125 of the United States Internal Revenue Code, is a written plan under which all participants are employees and the participants may choose among two or more benefits consisting of cash and qualified benefits. By funding the state health insurance program through a cafeteria plan, an employee may contribute on a pretax basis. The cafeteria plan must be maintained by the employer for the benefit of its own employees. Since employees of local governmental are not considered state employees, they are ineligible to participate in the cafeteria plan.

The legal counsel for the division expressed concerns regarding the impact of this legislation on the state's cafeteria plan, which is currently the sole source of directing employee contributions into the state program. According to the division, employees of other employers, including local

governments, cannot be included under the cafeteria plan and may jeopardize the state's cafeteria plan.

Recently, the Division of State Group Insurance identified the following five non-state entities and number of employees that are presently participating in the state group health insurance program, based upon the definition of state employee provided in s. 110.123, F.S.: the State Board of Administration (179), Florida Bar Association (29), Florida Inland Navigation District (6), West Coast Navigational District (2), and Immokalee Water and Sewer District (24). The division is presently reviewing legal issues pertinent to disenrolling these entities and providing continuation coverage, as required by law. In subsequent correspondence the Division acknowledged its erroneous identification of the State Board of Administration as a non-state agency. It did not further acknowledge its confusion of the Board of Bar Examiners, a state agency, as the Florida Bar.

According to the division's counsel, local governments could maintain their own separate cafeteria plans for its employees. The division was provided the following alternatives: (1) the state program could require local government employees to contribute solely on an after tax basis; (2) all contributions could be made by the employers directly - an option that avoids taxation on the employees but may strain the employers financially; or (3) the state could establish one multiple employer cafeteria plan, which is authorized by the Internal Revenue Code.

The establishment of a multiple employer cafeteria plan appears to be relatively rare. The Internal Revenue Code does not presently have regulations addressing the issue of multiple employer cafeteria plan in this context. It was estimated that such a plan would entail a significant amount of resources to establish and maintain.

### **III. Effect of Proposed Changes:**

**Section 1.** Creates s. 110.1228, F.S., to authorize small municipalities, small counties, special districts, and school boards of school districts located in small counties to be eligible to apply for participation in the state group health insurance program and the state prescription drug coverage program and to be eligible to enroll if certain conditions and terms are met, as determined by the Department of Management Services. As a prerequisite to applying for participation, the local government is required to adopt a resolution or ordinance ratifying such an application to the state programs.

“A small county” is defined to mean a county with a population of 100,000 or less and “a small municipality” is defined to mean an incorporated municipality with a population of 12,500 or less.

If the department determines that the local government is eligible to enroll, the local government must agree to the following terms and conditions: (1) minimum enrollment of 3 years; (2) minimum 1-year notice prior to withdrawal from the programs; (3) subsequent 2-year ineligibility period for local governments that withdraw from the programs; (4) automatic deduction for premiums due by the Department of Revenue or the Department of Banking and Finance from state funds distributed to the local government, in the event a local government fails to pay; and (5) information related to the administration of the program would be provided by the local government.

The committee substitute specifies that the provisions of ss. 624.436-624.446, F.S., relating to multiple-employer welfare associations and regulation by the Department of Insurance, would not apply to the state group insurance program. The department is also authorized to adopt rules to implement the provisions of this act.

**Section 2.** The committee substitute requires the Department of Management Services to request a written determination letter and a favorable letter ruling from the Internal Revenue Service by October 1, 2000. The department is required to submit such letters to the President of the Senate and the Speaker of the House Representatives within 30 days after receipt of the favorable or unfavorable letter.

**Section 3.** The act takes effect upon becoming law; except that section 1 will take effect July 1, 2001, but only if the department receives a favorable letter prior to that date. If the favorable letters are not received by July 1, 2001, section 1 of the bill will not take effect.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None. Participation is voluntary and contractual.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Certain insurers or health maintenance organizations that currently provide coverage to small municipalities, small counties, special districts or school boards located in small counties may experience a change in enrollment, contingent upon the number of local governments that opt to participate in the state programs.

To the extent coverage is currently unavailable, the levels of benefits are limited, or the availability of services are limited in certain areas of the state, a local government employee may benefit from participating in the state programs.

### C. Government Sector Impact:

To the extent a local government may have greater access or choice of coverage or experience some savings by joining the state program, this bill may benefit some local governments.

The Division of State Group Insurance of the Department of Management Services expressed the following concerns regarding the original SB 414.

#### **Administrative Issues**

The current State Program infrastructure does not have administrative linkages between the division and non-state entities which could present difficulties with respect to activities such as enrollment maintenance and coordination, eligibility determination, and premium collection.

#### **Eligibility Determination**

The eligibility determination criteria for state government and university employees may differ from 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.

#### **Timing**

The 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 Internal Revenue Code issues turn out to be unwarranted, 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 uncertainties associated with 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.

- The number of entities that would actually participate is unknown;
- 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);

- The risk profile (claims experience) which these entities would have; and
- Finally, the division is unable to make any reasonable assumptions 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.

### **Division Study**

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, the division believes that a 1-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.

The division 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. The division would submit a report to the Legislature in time for the 2001 Legislative Session.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

### **VIII. Amendments:**

None.