



Legislative Fiscal Bureau

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May 17, 2005

Joint Committee on Finance

Paper #445

State Health Care Coverage for Certain Employees of the Wisconsin Historical Foundation, Inc. (Historical Society and ETF)

[LFB 2005-07 Budget Summary: Page 157, #13, and Page 310, #6]

CURRENT LAW

The Wisconsin Historical Society (WHS) contracts with the Wisconsin Historical Foundation Inc., to administer the WHS membership program. WHS may also contract with the Foundation to solicit and accept contributions, gifts, grants, and bequests for WHS, marketing WHS goods and services, providing support for the operation, management, and development of WHS programs, and performing other functions approved by the WHS Board of Curators. All moneys received from admissions, sales, and other receipts of the WHS are credited to a nonlapsible segregated trust fund designated as the history preservation partnership trust fund.

The Group Insurance Board in the Department of Employee Trust Funds (ETF) offers health care coverage plans for state employees, local government employees, school district employees, and Wisconsin Retirement System (WRS) annuitants. For state employees, the Board must offer at least two insured or self-insured health care coverage plans providing substantially equivalent hospital and medical benefits, including a health maintenance organization or a preferred provider plan, if those health care plans are determined by the Board to be available in the area of the employee's place of employment and are approved by the Board. The Board is required to place each of the plans into one of three premium payment tiers established in accordance with standards adopted by the Board. The tiers must be separated according to the employee's share of premium costs.

Under this three-tier premium contribution structure, the state is required to pay premium costs for eligible employees, regardless of the plan selected by the employee, of not less than 80% of the average premium cost of plans offered in the tier with the lowest employee premium cost. Within this general framework, employee contributions relating to health insurance coverage are set through the collective bargaining process for represented employees, and by the

state compensation plan for nonrepresented classified employees and certain unclassified employees.

GOVERNOR

Stipulate that if the Wisconsin Historical Society enters into a contract with the Wisconsin Historical Foundation, Inc., for certain statutorily authorized purposes, any employee of the Foundation who had previously worked for the WHS would be eligible for the health care coverage plans offered to state employees by the Group Insurance Board.

Specify that such eligibility would be subject to enrolling in the plans during any applicable enrollment period and to meeting any conditions established by contract or by rule. Authorize the Group Insurance Board to establish the procedures and provisions pertaining to the coverage of such Foundation employees by contract or by rule.

Require the Foundation, if it enters into a contract with the WHS for any statutorily authorized purpose, to provide state group health insurance coverage to its employees who were previously employed by the WHS. Create a PR continuing appropriation under ETF to which moneys from the Foundation would be credited for the payment of the health care coverage benefits provided to eligible Foundation employees and for ETF's costs of administering these benefits.

DISCUSSION POINTS

1. Established in 1954, the Wisconsin Historical Foundation Inc., is a not-for-profit, tax-exempt Wisconsin corporation, created for the exclusive support of the Wisconsin Historical Society and its mission. The Foundation has a 28-member board and nine full-time staff members, none of whom is a former Historical Society employee. Current Foundation employees and their families are offered health care coverage under a group plan. Since contracting with the Foundation to run its membership program, the Historical Society's membership has grown from 3,500 to more than 12,000.

2. In response to potential budget and position cuts in the 2005-07 biennium, WHS explored options for transitioning certain programs and employees from the Society to the Foundation. Offering health care coverage under a plan offered to state employees would make such a transition of state employees to the Foundation a more attractive option than would be the case absent that insurance. As a response to the concerns about possible position reductions, WHS sought continued state group health insurance coverage eligibility for former WHS employees as part of its 2005-07 biennial budget request.

3. Under AB 100, the Society's GPR-funded general program operations appropriation would be reduced by \$274,800 GPR annually and 3.0 GPR positions would be deleted in 2005-06, including an unclassified division administrator position, a supervisory position in the Division of

Historic Preservation/Public History, and a supervisory position in the Division of Administrative Services. All of these positions are currently vacant.

4. In addition, the bill would reallocate \$60,300 GPR from salaries and fringe benefits to supplies and services and delete 0.75 GPR position in 2006-07 associated with the consolidation of information technology server and network infrastructure support in the Department of Administration.

5. The position reductions under the bill total 3.75 positions (2.6% of the authorized position total for WHS). It would appear that none of these positions could be considered appropriate to transition to employment with the Foundation. Consequently, the anticipated position reductions that the WHS was concerned with did not materialize in the Governor's 2005-07 biennial budget bill. As a result, WHS officials indicate that the Society does not currently have plans to transition any programs or WHS employees to the Foundation.

6. The provision of state group health insurance coverage to former state employees of the Historical Society who work for the Foundation would have the effect of offsetting a portion of the savings associated with a reduction of state positions because the contract costs paid to the Foundation would presumably have to cover the cost of health insurance coverage for these former state workers. Therefore, under the bill's provision, the state would effectively be paying for the health care coverage of these non-state workers.

7. Given these cost implications and the fact that the WHS has no current plans to contract additional programming functions or to transition state employees to employment with the Foundation, the Committee may wish to delete the Governor's recommendation.

8. However, if the Committee wishes to support the recommendation, it may want to modify the provisions in order to address certain issues.

9. First, under current law, if an employer participant in the WRS, other than the state (for example, a local unit of government), fails to pay the required contribution amounts, the Department of Employee Trust Funds (ETF) must certify the amount of the deficiency to the Department of Administration, which is authorized to withhold the amount due from the next payment of state aids to the jurisdiction.

10. If a private, nonprofit organization like the Foundation would cease operations or default in a required health insurance payment, there would be no similar mechanism under current law for ETF to recover the amounts due. The state could seek to hold the nonprofit organization liable for these costs, or it could withhold the health insurance amounts from the periodic contract payments made to the Foundation to cover the health premium costs. However, this latter approach may further exacerbate any financial difficulty the nonprofit organization was having.

11. A provision could be added to the bill to provide that if the Foundation defaults in its required health insurance payments, the health insurance payments would become the responsibility of the affected employees.

12. A second issue is that the provisions under the bill would establish health insurance eligibility for any former employee of the Historical Society working for the Foundation, regardless of when the former employee worked for the Historical Society or in what capacity. It could be argued that eligibility for continued state group health insurance cover should be limited to those individuals who worked for the Historical Society immediately prior to the implementation of a contract with the Foundation and who perform the same or similar duties for the Foundation as they did at the Historical Society.

13. Finally, under AB 100, no provision is made for the relative proportions of employer and employee contributions to the monthly health care coverage premiums for the affected employees. On the one hand, this could be left to the Foundation's Board of Directors to determine as a matter of its own policy. On the other hand, under the terms of the contract between the Historical Society and the Foundation, the costs of the Foundation's health care costs for these employees would be reflected in the amount paid by the state to the Foundation. If the state ultimately still pays for the health insurance coverage of these former state employees, it would seem reasonable that these employees contribute at least as much for their health care coverage as do state workers.

14. The employee contribution rates for plans in the state's three-tier system in 2005 have been established as follows:

Current State Employee Health Premium Contributions

	2005	
	<u>Single</u>	<u>Family</u>
Tier 1	\$22.00	\$55.00
Tier 2	\$50.00	\$125.00
Tier 3	\$100.00	\$250.00

15. Given this circumstance, the state could require that the Foundation pay no more for the health care premiums for these employees than the employer share paid by the state for plans in each of the three tiers. In other words, the employee contribution paid by the former state workers employed by the Foundation would need to be at least as much as state employees pay for health care coverage.

16. Finally, the Committee should be aware that ETF has raised certain policy concerns about the state extending health care benefits to non-state workers. Currently, the WRS and the group insurance plans offered to WRS participants qualify as "governmental plans." A governmental plan must be established and maintained exclusively for its employees by any of the following entities:

- the federal government;

- any state government or political subdivision; or
- an agency or instrumentality of any of the foregoing.

17. ETF officials indicate that the provision of state employee group health insurance coverage to former state workers who are now employed by a non-state entity could result in a determination that the state's health care benefit plan is no longer a governmental plan. If this were to occur, the state's benefit plan and the Group Insurance Board could then become subject to the requirements of federal law under the Employee Retirement Income Security Act of 1975 (ERISA).

18. In general, ERISA does not cover group health plans established or maintained by governmental entities, churches for their employees, or plans which are maintained solely to comply with applicable workers compensation, unemployment, or disability laws.

19. ERISA sets minimum standards for most voluntarily established pension and health plans in private industry. In order to protect individuals in these plans, ERISA: (a) requires plans to provide participants with information about plan features and funding; (b) provides fiduciary responsibilities for those who manage and control plan assets; (c) requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and (d) gives participants the right to sue for benefits and breaches of fiduciary duty.

20. It is unclear at this time what the implications would be if the state employee health care coverage program lost its status as a governmental plan and became subject to ERISA. ETF believes that, at a minimum: (a) numerous ERISA reporting requirements would newly apply to ETF's employee group health insurance programs; and (b) the fiduciary responsibilities of the Group Insurance Board would need to be modified to conform to ERISA requirements.

21. ETF officials also indicate that while the issue of a potential change in status of the state's plan is a concern, little information is available regarding the actual likelihood that a change would occur if the plan were extended to non-state workers. The AB 100 provision would provide state employee coverage to a very limited number of such individuals. It is not clear that providing state employee health insurance coverage to this small number of individuals would be sufficient to put the state at risk for a change of status of a governmental plan that provides health insurance benefits to over 68,500 state employees.

22. Because of these uncertainties, the Committee could direct that these issues be thoroughly evaluated prior to any statutory change being adopted to expand the eligibility of state employee health insurance coverage to non-state workers. This could be done through a study of the issue by the Group Insurance Board and could include a directive that the appropriate federal agencies be consulted on the implications of covering non-state employees under the state employee group health insurance plan. If the report would be submitted on or before April 30, 2006, the findings could be utilized in the preparation of agency budget requests for the 2007-09 biennium.

ALTERNATIVES

1. Approve the Governor's recommendation.

In addition to Alternative 1, the Committee may adopt one or more of Alternatives 2, 3 or 4.

2. Provide that, if the Foundation defaults in its required group health insurance payments to the state, any employee affected would be liable for his or her entire health insurance premium payments.

3. Limit the eligibility for state group health insurance coverage to those individuals who worked for the Historical Society immediately prior to the implementation of a contract with the Wisconsin Historical Foundation, Inc., and who perform the same or similar duties for the Wisconsin Historical Foundation, Inc., as they did at the Historical Society.

4. Require the Wisconsin Historical Foundation, Inc., to contribute no more than the state employer share for group health insurance plans in each of the three tiers for the health insurance coverage of former Wisconsin Historical Society employees employed by the Wisconsin Historical Foundation, Inc.

5. Delete the Governor's recommendation. Instead, direct the Group Insurance Board to evaluate the issues relating to providing eligibility for state employee group health insurance coverage to former state workers who now work for private vendors under contract with the state. Specify that the study assess the effect that this type of arrangement would have on the status of the state's group health benefit plan as a governmental plan under federal law. Direct the Group Insurance Board to seek a ruling from the appropriate federal agencies on whether the inclusion of such former state employees under the state employee group health insurance plan would affect the status of the plan as a governmental plan. If the state's group health insurance plan could become subject to the provisions of ERISA, direct the Group Insurance Board to assess the range of ERISA requirements that would need to be addressed by the state in order to be in compliance with federal law. Require the Group Insurance Board to report its findings to the Legislature and the Governor no later than April 30, 2006.

6. Delete the Governor's recommendation.

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