



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #324

Domestic Partner Retirement and Group Insurance Benefits (ETF)

[LFB 2009-11 Budget Summary: Page 236, #6]

CURRENT LAW

Under current law, a spouse of a Wisconsin Retirement system (WRS) participant is included in statutory definitions of alternative payee, beneficiary, and dependent, and is provided with: (a) eligibility for survivor rights to group health insurance coverage; (b) beneficiary rights to retirement annuities and annuity options; (c) status under law pertaining to benefit abandonment and for benefits paid to minors and individuals found incompetent; (c) access to long-term care insurance; (d) beneficiary rights to duty disability program benefits applicable to protective occupation participants; and (e) access to all or part of a participant's accumulated assets held in a deferred compensation plan under a domestic relations order to satisfy a family support or marital property obligation.

The Group Insurance Board offers health care coverage plans for state employees, local government employees, school district employees, and 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 must provide both a family coverage option for persons desiring to cover eligible dependents, and a single coverage option for other eligible persons. The Department of Employee Trust Funds (ETF) is authorized to promulgate rules to define the term "dependent" for each group insurance plan. For health insurance purposes, the Department's rules define a dependent as an employee's spouse and an employee's unmarried child who is dependent upon the employee or the employee's former spouse for at least 50% of support and maintenance. Child includes a natural child, stepchild, adopted child, a child in certain adoptive placements, and a legal ward who became a legal ward of the employee or the employee's former spouse

prior to age 19, and who is: (a) under the age of 19; (b) age 19 or over but less than age 25, if a full-time student; or (c) age 19 or older and incapable of self-support because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

GOVERNOR

Provide that domestic partners be treated in the same manner as spouses with respect to: (a) all pension benefits provided to public employees participating in the WRS; and (b) benefits provided to state employees and certain local government employees participating in ETF group insurance programs. For the purposes of the WRS and state employee benefits (Chapter 40 of the statutes), define domestic partner as an individual in a domestic partnership. Define domestic partnership as a relationship between two individuals that satisfies all of the following criteria: (a) each individual is at least 18 years old and otherwise competent to enter into a contract; (b) neither individual is married to, or in a domestic partnership with, another individual; (c) the two individuals are not related by blood in any way that would prohibit marriage under state law; (d) the two individuals consider themselves to be members of each other's immediate family; and (e) the two individuals agree to be responsible for each other's basic living expenses. This definition of a domestic partnership would include both same-sex and opposite-sex domestic partners. [Note: the bill also includes other provisions for the establishment of same-sex domestic partnerships and related rights and benefits. The summary of these provisions is included in the Legislative Fiscal Bureau's March, 2009, Summary of AB 75 under General Provisions, Page 304, Item #2.]

With respect to the WRS and group insurance benefits, the bill would: (a) modify the definitions of alternative payee, beneficiary, and dependent to include a domestic partner; (b) provide that eligibility for survivor rights to group health insurance coverage would include domestic partners; (c) provide a domestic partner with the same beneficiary rights as a spouse as they pertain to retirement annuities and annuity options; (d) include a domestic partner in provisions relating to benefit abandonment and benefits paid to minors and individuals found incompetent; (e) provide that a domestic partner would receive the same treatment as a spouse under current law provisions relating to health insurance benefits, the regular and supplemental accumulated sick leave conversion credit program, long-term care insurance, and duty disability program benefits applicable to protective occupation participants; and (f) provide that an assignment of all or part of a participant's accumulated assets held in a deferred compensation plan under a domestic relations order may be made to a domestic partner to satisfy a family support or marital property obligation.

Provide that the treatment of the domestic partnership status under the bill would first apply to coverage under group insurance plans offered by the Group Insurance Board on January 1, 2011.

DISCUSSION POINTS

1. Chapter 40 of the statutes governs the administration of the Wisconsin Retirement System (WRS), which includes nearly all public employees in the state except employees of Milwaukee County and the City of Milwaukee, which operate separate retirement systems. Chapter 40 also authorizes various benefit programs, primarily applicable to state employees, including health insurance coverage. Under these Chapter 40 provisions, spouses are provided with a legal status and a range of beneficiary rights pertaining to retirement benefits and other benefit programs.

2. The Governor's provisions would extend these spousal rights to domestic partners. The bill would provide a definition of "domestic partner" and a "domestic partnership" in Chapter 40. These definitions are generally consistent with the definitions employed in other jurisdictions where domestic partners are provided with access to employee benefits. Both same-sex and opposite-sex partners would be covered under the definition provided in the bill.

3. The primary fiscal effect of these provisions relates to state employee health insurance coverage. Before dealing with this issue, beneficiary rights relating to the WRS and other benefit programs will be discussed.

Beneficiary Rights for Domestic Partners

4. Under current law, WRS participants, including both state and local public employees and annuitants, may designate the person, or a trust in which the person has a beneficial interest, that would be the beneficiary of WRS assets in the event of the participant's death. A domestic partner may, therefore, be designated a beneficiary.

5. However, under current law:

- A spouse is provided with survivorship status to receive an annuity in the event of the participant's death when no beneficiary has been designated.
- A spouse of at least one year may not be excluded from annuity payment options without his or her consent, and must sign, with the participant, any application for a lump-sum payment of a retirement benefit.
- A spouse has certain rights if a WRS participant dies before the distribution of benefits have commenced.
- A spouse may be provided with a benefit payment for a minor or an individual found incompetent who is under the care of the spouse.

Under current law, an unmarried partner of a WRS participant would not have this status or these rights. The bill would provide the same beneficiary status and rights to domestic partners that spouses currently have with respect to retirement annuities, annuity options, lump-sum payments, and benefit assignment under the WRS.

6. According to ETF officials, who have discussed the bill's provisions with the WRS consulting actuary, this expansion of beneficiary rights would not materially change the level or cost of retirement benefits and would have little, if any, fiscal impact on the WRS.

7. Another employee benefit program affected by the Chapter 40 provisions is long-term care insurance. Under current law, the state is required to offer, through the Group Insurance Board, to eligible state employees and state annuitants long-term care insurance policies. The state must also allow an eligible employee or an annuitant to purchase those policies for his or her spouse or parent. The bill would allow an eligible employee or a annuitant to also purchase a policy for his or her domestic partner. Because the premium costs for these long-term care policies are paid by the employee or annuitant, there is no state fiscal effect associated with this provision.

8. Under current law, the state operates a Deferred Compensation Program for state employees, which is a supplemental retirement savings program authorized under Section 457 of the Internal Revenue Code (IRC). Statutes relating to the program define a "domestic relations order" as a judgment, decree, or order issued by a court pursuant to a domestic relations law of any state or territory of the United States that meets certain requirements and: (a) relates to a marriage that terminated after December 1, 2001; and (b) assigns all or part of a participant's accumulated assets held in a deferred compensation plan to a spouse, former spouse, child, or other dependent to satisfy a family support or marital property obligation. Under the bill, an assignment of a participant's accumulated assets held in a deferred compensation plan could be made to a domestic partner or former domestic partner. The provision would have no state fiscal effect.

9. Under Chapter 40, a protective occupation participant is entitled to a duty disability benefit if: (a) the employee is injured while performing his or her duty or contracts a disease due to his or her occupation; (b) the disability is likely to be permanent; and (c) the disability causes the employee to retire from his or her job, the employee's pay or position is reduced, the employee is assigned to light duty, or the employee's promotional opportunities within the service are adversely affected if state or local employer rules, ordinances, policies or written agreements specifically prohibit promotion because of the disability.

Under duty disability law, monthly benefits may be reduced by amounts the participant receives from other benefit payments, including any social security benefit payable to the participant or the participant's spouse or a dependent because of the participant's work record. However, a duty disability benefit may not be reduced because of income or benefits that are attributable to the earnings or work record of the participant's spouse or other member of the participant's family, or because of income or benefits attributable to an insurance contract, including income continuation programs.

Further, duty disability law provides that, if a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid, or would be payable, the participant's surviving spouse, or unmarried child under the age of 18, may, under certain circumstances, qualify for a continued monthly benefit. Depending on the date on which the duty disability application was filed, a spouse could receive either 50% or 70% of the participant's monthly salary at the time of death, reduced by other benefit payments as described above.

10. Under the bill, a domestic partner would be included in these duty disability provisions in the same manner as a spouse. Therefore, the spousal death benefit under the program (50% or 70% of the participant's monthly salary, as described above) would also be available to a domestic partner. According to ETF officials, the fiscal effect of these provisions would be the cost of the additional payments that may be made to domestic partners over time (that would not be made under current law). The amount of these payments cannot be estimated because the potential number of domestic partner beneficiaries and the timing of survivor claims is unknown. However, the Department indicates that it is not known whether these additional duty disability program costs would be sufficient to increase the premium contribution rates required for the program. Premium rates are charged to employers based on experience and the rate varies by employer. Currently, the average premium rate is approximately 3.88% of protective occupation covered payroll.

11. As drafted, AB 75 would have the provisions discussed above be effective upon enactment. Departmental officials, however, indicate that ETF would have difficulty implementing these provisions immediately because time would be required to modify departmental forms and manuals, promulgate administrative rules, and modify information technology systems. The Department requests that the WRS changes first take effect on January 1, 2010, to provide the Department adequate time to properly implement the changes. [Alternative 2a]

12. In conclusion, the bill's provisions would establish WRS beneficiary status and rights for domestic partners, but would not modify retirement benefits or materially affect retirement costs. The bill would also treat a domestic partner in the same manner as a spouse under several other insurance programs as described above. With one exception, these provisions would not affect state costs. The exception, the duty disability program, would likely result in some additional benefit payments. However, the amount of these payments in the future are unknown. It is also not known whether these increased benefit costs would be sufficient to affect the premium contribution rate for the program. Finally, ETF requests that the effective date of bill's provisions (described above) take effect beginning January 1, 2010, rather than immediately following enactment.

Health Insurance Coverage for Domestic Partners

13. Assembly Bill 75 would provide that domestic partners be treated in the same manner as spouses with respect to benefits provided to state employees and certain local government employees participating in ETF group insurance programs. The bill would add a domestic partner (same-sex, or opposite-sex, partner) to the definition of "dependent" for group insurance purposes, including health insurance coverage and the regular and supplemental accumulated sick leave conversion credits available to surviving insured dependents. The domestic partnership status under the bill would first apply to coverage under group insurance plans offered by the Group Insurance Board on January 1, 2011.

14. While the bill does not specify in statute a process to determine eligibility, enroll eligible participants, and implement some of the administrative aspects of domestic partner group insurance coverage, such a process would typically be established under the Group Insurance Board's existing rule-making authority.

15. According to ETF officials, for coverage to be provided, a signed affidavit or registration form will need to be submitted by the employee and his or her domestic partner to either the employer (a state agency) or to ETF. The written affidavit would need to certify that: (a) all the required eligibility criteria specified in the bill have been satisfied; (b) any change in the status of the domestic partnership will be reported to the employer in a timely manner; and (c) the insured parties acknowledge the existence of any other provisions or restrictions that may apply. Since enrollment and administration of health care coverage for state employees is currently handled by each state agency for its respective employees, it is anticipated that the certification process for domestic partner health care coverage would likewise be administered by each state agency.

Departmental officials believe the registration process could be more rigorously defined under the bill and that some additional modifications would be advisable. Therefore, ETF officials have made several suggestions that could be viewed as helping to ensure the proper implementation of the domestic partner provisions.

16. First, ETF officials recommend that the statutes require that an signed affidavit or some form of certification be filed either with ETF or the employer (state agency) to document the existence of the domestic partnership. Under this alternative, the affidavit would attest to the fact that the individuals meet the requirements of a domestic partnership as required by law. Employing agencies would be required to obtain the certification at the time of initial enrollment for health insurance coverage, or when a request is made to change the status of an existing enrollment. Further, the timely submission of an affidavit or certification upon the dissolution of a domestic partnership would be required. Finally, the Group Insurance Board would be authorized to design the affidavit forms to ensure completeness and uniformity. [Alternative 3a]

17. Second, ETF officials note that, under Wisconsin law, it is unlawful for any person, who is or has been a party to an action for divorce in any court in this state, or elsewhere, to marry again until six months after judgment of divorce is granted. However, under AB 75, a domestic partnership could be terminated and another created without any delay. Departmental officials believe that this lack of separation between old and new domestic partnerships could result in overlapping insurance coverage of a former and current spouse or domestic partner, due to the fact that premiums are generally withheld up to two months in advance of the month of coverage. Accordingly, ETF officials suggest that a six-month waiting period following a divorce or the termination of a domestic partnership and the enrollment of a new spouse or domestic partner in state's health insurance plans should be required. This would alleviate the concern about having improper overlapping coverage. [Alternative 3b]

18. Finally, ETF officials point out that the definition for a same-sex domestic partnership created under the bill in proposed Chapter 770 would include the requirement that the parties to a domestic partnership share a common residence. Specifically, the Chapter 770 provision would require that the two individuals share a common residence (even if only one of the individuals has legal ownership of the residence, or one or both of the individuals have one or more additional residences not shared with the other individual, or one of the individuals leaves the common residence with the intent to return).

This element of the domestic partnership definition is not included in the definition that would be created under Chapter 40 of the statutes, relating to the WRS and other employee benefits. Departmental officials suggest that including this criterion in the Chapter 40 definition is a reasonable requirement and would help to limit the provision of benefits to cognizable households or family units and provide greater consistency in the application of domestic partner standards across state law. [Alternative 3c]

19. Under the domestic partnership provisions, there are tax consequences that would vary, depending on the status of the domestic partner. Under federal law, the value of employee health insurance paid for by an employer, including family coverage for spouses and dependents, is excluded from the employee's gross income. However, employer-provided health insurance for a domestic partner of an employee is only excludable from an employee's income if the domestic partner qualifies as a dependent of the employee under federal tax law.

Under federal law, to which state law conforms, a domestic partner would qualify as a taxpayer's dependent for purposes of the exclusion described above if the domestic partner: (a) had the same principal abode as the taxpayer and was a member of the taxpayer's household during the entire taxable year of the taxpayer; (b) was not the taxpayer's spouse at any time during the taxable year; (c) was a U.S. citizen or a resident of the U.S. or a country contiguous to the U.S.; and (d) did not file a joint return with a spouse for the same taxable year. Generally, a domestic partner living with a taxpayer as a member of the taxpayer's household would not qualify as a dependent of the taxpayer unless the taxpayer provided more than 50% of the domestic partner's support and the domestic partner had gross income below a specified maximum amount that is adjusted annually for inflation. For tax year 2009, the specified maximum income level is \$3,650.

Under federal and state income tax provisions, an employee receiving employer-provided health insurance for a domestic partner who is not the employee's dependent would have to include in the employee's income the excess of the fair market value of the health insurance premiums attributable to the domestic partner's coverage over the amount paid by the employee for such coverage. In addition, the employer and the employee would each be required to pay FICA-related taxes of 7.65% of the value of the premiums paid for by the employer for a domestic partner who was not a dependent of the employee. These additional employer costs would be funded from the amounts available to the affected state agency for fringe benefits costs.

20. The Group Insurance Board and its consulting actuary have evaluated domestic partner group health insurance coverage proposals that have been offered during prior legislative sessions. ETF officials indicate that these costing assumptions have been reexamined since the introduction of AB 75. As has been the case in the past, the Board's actuary indicates that same-sex domestic partners have not been shown to be any more costly to insure than opposite sex couples. Therefore, the ETF actuary concludes that the increase in state costs would result from more individuals enrolling in the state employee group health insurance plan coverage, and not from any factors for the overall state employee health insurance pool.

21. The ETF consulting actuary's assessment, based on these factors, as well as data relating to the provision of domestic partner coverage in other jurisdictions, concludes that, under the bill's provisions, overall health insurance costs for state employees would increase between 1.25% and 1.75%, if coverage is extended to both same-sex and opposite-sex domestic partners. This is somewhat narrower than the range (1% to 2%) the actuary estimated for legislation in earlier sessions (for example, 2007 SB 40, the 2007-09 biennial budget bill). According to ETF actuary, the reason for this is that more recent studies are now available that indicate somewhat lower rates of domestic partner enrollment than earlier studies had indicated.

In 2009, the annual state costs (exclusive of employee contributions) to provide state employee group health insurance coverage is projected to total approximately \$906.9 million (all funds). Based on these costs and the projected 1.25% to 1.75% increase, the annualized state costs for coverage of domestic partners would be estimated to fall within the range of \$11.3 million to \$15.9 million (all funds). Based on these projected all-funds costs, the annualized state GPR costs for domestic partner coverage under the bill could fall in the range of \$4.7 million to \$6.7 million.

22. This cost estimate should be viewed as the total fiscal effect of the provision that would emerge over time. Initially, state employee health insurance costs relating to the addition of a domestic partner to the employee's group health insurance contract would increase state costs only if the state employee's original contract was changed from single coverage to family coverage. For those state employees currently enrolled under family coverage, the addition of a domestic partner would not result in any immediately higher costs for the state. However, over time, as the additional medical costs of more enrollees are built into future premium calculations, additional costs would accrue to the state. It is not possible, therefore, to accurately estimate the extent to which these costs would emerge in the 2009-11 biennium.

23. It should be noted that other jurisdictions and institutions providing domestic partner health insurance coverage to public employees appear to have experienced lower cost increases than the ETF actuary projects for Wisconsin under AB 75. For example, the City of Milwaukee reports that 0.97% of its employee health insurance coverage contracts include a domestic partner and an associated increase in active-employee health coverage costs of 0.3%. In 2007, Western Technical College (La Crosse) reported that 1.1% of eligible employees had enrolled domestic partners in health insurance coverage with an associated cost of 0.75%. Dane County reported that the cost for domestic partner coverage in 2007 was just over 1% of total health care expenditures. Finally, the State of Iowa reports that 0.38% of current health care coverage contracts include a domestic partner. For all these examples, the employers provide domestic partner coverage for both same-sex and opposite sex partners.

24. However, the ETF consulting actuary indicates that projected costs are impacted by a complex of factors, including the legal definition of a domestic partnership (the required criteria to be certified as a domestic partner), and by the strength of the affidavit required of the domestic partners for health insurance coverage enrollment. Further, the actuary notes the quality of the health insurance plans offered by the State of Wisconsin to its employees and the low employee contributions required for this coverage is likely to effect higher utilization. The actuary's expertise

is to factor together and assess the combined effect of demographical data, the experience of other jurisdictions, the legal criteria that will set the parameters and limitations of utilization, and the likely behavior of those who may be affected by the provision.

Therefore, while some jurisdictions may experience lower domestic partner health coverage cost increases than the ETF actuary projects for the state under AB 75, there are likely a range of factors to account for these differences.

25. The domestic partnership status under the bill would first apply to coverage under group insurance plans offered by the Group Insurance Board on January 1, 2011. In a budget errata report dated March 19, 2009, the state budget office indicates that the Governor would like to have the initial applicability date for coverage changed to January 1, 2010, if the budget bill passes before August 1, 2009. The Department indicates that sufficient time is required to make sure that the insurance contracts reflect the new coverage requirements. However, if the bill is enacted by August 1, 2009, ETF officials believe the necessary changes can be made for 2010 insurance coverage. [Alternative 2b] Advancing the initial coverage of domestic partners from 2011 to 2010, however, would produce a greater fiscal effect for the state in the 2009-11 biennium.

26. Under the regular and supplemental accumulated sick leave conversion credit (ASLCC) program, unused sick leave is converted into a credit amount to pay for future health insurance premiums for retirees and their insured dependents. By including a domestic partner in the definition of a dependent, the bill's provisions would also have the effect of making the credits available to a domestic partner, in the event the domestic partner is a surviving insured dependent of an eligible employee who is deceased. This could increase costs for the program because the use of the credits, which would have otherwise ceased upon the death of the annuitant, may continue to be used by the surviving domestic partner. It should also be noted that in the event an annuitant carries family coverage to cover a domestic partner, when otherwise he or she would have carried single coverage, the annuitant's sick leave credits would be used up more quickly. These effects would not be expected to materially affect the state contribution rates that fund this program.

A domestic partner's use of the credits of an employee who is deceased, would probably have individual tax implications, as discussed above, because the value of the health insurance paid for with the credits may be considered imputed income to the surviving domestic partner.

27. Finally, if the Committee believes that the WRS beneficiary modifications under the bill are not needed and that the current level of state employee benefits adequately addresses the primary group insurance needs of its workers within the budgetary constraints that the state is operating under, it may view the domestic partner provisions as inadvisable at this time. If this is the case, the Committee could delete the provision. [Alternative 4]

ALTERNATIVES

1. Approve the Governor's recommendation to provide that domestic partners be treated in the same manner as spouses with respect to: (a) all pension benefits provided to public

employees participating in the WRS; and (b) benefits provided to state employees and certain local government employees participating in ETF group insurance programs. For the purposes of the WRS and state employee benefits (Chapter 40 of the statutes), define domestic partner as an individual in a domestic partnership. Define domestic partnership as a relationship between two individuals that satisfies all of the following criteria: (a) each individual is at least 18 years old and otherwise competent to enter into a contract; (b) neither individual is married to, or in a domestic partnership with, another individual; (c) the two individuals are not related by blood in any way that would prohibit marriage under state law; (d) the two individuals consider themselves to be members of each other's immediate family; and (e) the two individuals agree to be responsible for each other's basic living expenses.

With respect to the WRS and group insurance benefits: (a) modify the definitions of alternative payee, beneficiary, and dependent to include a domestic partner; (b) provide that eligibility for survivor rights to group health insurance coverage would include domestic partners; (c) provide a domestic partner with the same beneficiary rights as a spouse as they pertain to retirement annuities and annuity options; (d) include a domestic partner in provisions relating to benefit abandonment and benefits paid to minors and individuals found incompetent; (e) provide that a domestic partner would receive the same treatment as a spouse under current law provisions relating to health insurance benefits, the regular and supplemental accumulated sick leave conversion credit program, long-term care insurance, and duty disability program benefits applicable to protective occupation participants; and (f) provide that an assignment of all or part of a participant's accumulated assets held in a deferred compensation plan under a domestic relations order may be made to a domestic partner to satisfy a family support or marital property obligation.

Provide that the treatment of the domestic partnership status under the bill would first apply to coverage under group insurance plans offered by the Group Insurance Board on January 1, 2011.

2. Modify the effective dates of the provisions by adopting one or both of the following:

a. Provide that the provisions under the bill relating to Chapter 40 beneficiary rights of domestic partners (including the provisions relating to long-term care insurance, deferred compensation, and duty disability) first take effect on January 1, 2010, to provide the Department adequate time to properly implement the changes.

b. Modify the initial applicability of the provision in the bill to provide that domestic partner benefits would first apply to coverage under group insurance plans offered by the Group Insurance Board on January 1, 2010, unless the effective date of the bill is on or later than August 1, 2009, in which case the domestic partner benefits would first apply to coverage under group insurance plans offered by the Group Insurance Board on January 1, 2011.

3. Modify the domestic partner provisions by adopting one or more of the following changes:

a. Provide that, for enrollment of domestic partners in the group insurance plans offered by the Group Insurance Board, an affidavit be required to attest to the fact that the individuals meet the requirements of a domestic partnership as required by law. Require that employing agencies obtain the affidavit at the time of initial enrollment for health insurance coverage, or when a request is made to change the status of an existing enrollment. Require the timely submission of an affidavit or certification upon the dissolution of a domestic partnership. Authorize the Group Insurance Board to design the appropriate affidavit forms. [Under current law, the Board has the authority to promulgate rules for the administration of these provisions.]

b. Provide that, following a divorce or the termination of a domestic partnership, a six-month waiting period be required before the enrollment of a new spouse or domestic partner in a group insurance plan offered by the Group Insurance Board.

c. Provide that the following criterion be included as a requirement in the definition of a domestic partnership under Chapter 40 of the statutes: the two individuals share a common residence [even if only one of the individuals has legal ownership of the residence, or one or both of the individuals have one or more additional residences not shared with the other individual, or one of the individuals leaves the common residence with the intent to return].

4. Delete provision.

Prepared by: Art Zimmerman