WISCONSIN LEGISLATIVE COUNCIL

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TO: SENATOR MARK MILLER

FROM: Jessica Karls-Ruplinger, Staff Attorney, Laura Rose, Deputy Director, and Dan Schmidt, Senior Analyst

RE: January 2011 Special Session Senate Bill 11 and January 2011 Special Session Assembly Bill 11, the Budget Adjustment Bill

DATE: February 14, 2011

This memorandum describes January 2011 Special Session Senate Bill 11 and January 2011 Special Session Assembly Bill 11, relating to state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the State Civil Service System, the Medical Assistance (MA) program, sale of certain facilities, granting bonding authority, and making an appropriation.

COLLECTIVE BARGAINING

Municipal Employment Relations

Subjects of Collective Bargaining

Under ***current law***, municipal employees have the right to collectively bargain with respect to wages, hours, and conditions of employment. In a school district, the employer is also required to bargain collectively with respect to the development of or any changes to a teacher evaluation plan and with respect to time spent during the school day, separate from pupil contact time, to prepare lessons, labs, or educational materials; to confer or collaborate with other staff; or to complete administrative duties.

The ***bill*** continues to allow collective bargaining with respect to wages, hours, and conditions of employment for public safety employees. A "public safety employee" is a municipal employee who is employed in a position that is classified as a protective occupation participant under: (1) the Wisconsin Retirement System (WRS) and who is a police officer, fire fighter, deputy sheriff, county traffic police officer, or person employed by a village to perform police and fire protection duties; or (2) a provision that is comparable to the provision in (1) that is in a county or city retirement system.

However, the ***bill*** eliminates collective bargaining with respect to hours and conditions of employment for general municipal employees (municipal employees who are not public safety employees) and repeals the provisions, described above, that specifically apply to school districts. The ***bill*** maintains the right of municipal employees to collectively bargain with respect to wages. Wages include only total base wages and excludes any other compensation, including overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

Under the ***bill***, a municipal employer may not bargain collectively with general municipal employees with respect to a proposal that does any of the following:

- If there is an increase in the consumer price index (CPI) change,[1] provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the CPI change.

- If there is a decrease in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement decreased by a percentage of that expenditure that is equal to the decrease in the CPI change.

Further, the ***bill*** provides that if a local governmental unit[2] wishes to increase the total base wages of its general municipal employees in an amount that exceeds the above limit, the governing body of the local governmental unit must adopt a resolution to that effect. The resolution must specify the amount by which the proposed total base wages increase will exceed the limit. The resolution may not take effect unless it is approved in a referendum, which must occur in November for collective bargaining agreements that begin the following January 1. The referendum results apply to the total base wages only in the next collective bargaining agreement. The referendum question is substantially as follows: "Shall the … [general municipal employees] in the … [local governmental unit] receive a total increase in wages from $ … [current total base wages] to $ … [proposed total base wages], which is a percentage wage increase that is … [x] percent higher than the percent of the consumer price index increase, for a total percentage increase in wages of … [x]?" The referendum requirement also applies to school districts, except that the referendum must occur in April for collective bargaining agreements that begin in July.

The ***bill*** requires that each local governmental unit that is collectively bargaining with its employees determine the maximum total base wages expenditure that is subject to collective bargaining, calculating the CPI change using the method used by the Department of Revenue (DOR). In addition, if

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[1] The bill defines "consumer price index change" as the average annual percentage chance in the CPI for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the current date.

[2] The bill defines "local governmental unit" as any city, village, town, county, metropolitan sewerage district, long-term care district, transit authority, local cultural arts district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state.

a school board is collectively bargaining with school district employees, the school board must determine the maximum total base wages expenditure that is subject to collective bargaining, calculating the CPI change using the method used by DOR.

Lastly, the ***bill*** provides that no local governmental unit or school board may collectively bargain with its employees, except as provided under the Municipal Employment Relations Act (MERA). On the effective date of the bill, if a local governmental unit has in effect an ordinance or resolution that is inconsistent with this prohibition, the ordinance or resolution does not apply and may not be enforced.

Collective Bargaining Unit

The ***bill*** provides that a collective bargaining unit may not include both public safety employees and general municipal employees.

Certification of Representative of Collective Bargaining Unit

Under ***current law***, a representative chosen by a *majority of the municipal employees voting* in a collective bargaining unit is the exclusive representative of all employees in the unit for the purpose of collective bargaining. The representative remains in place unless the representative is decertified in a method provided under current law.

The ***bill*** provides that the Wisconsin Employment Relations Commission (WERC) must annually conduct an election to certify the representative of a collective bargaining unit that contains a general municipal employee. The election must occur no later than December 1 for a collective bargaining unit containing school district employees and no later than May 1 for a collective bargaining unit containing general municipal employees who are not school district employees. WERC must certify any representative that receives at least *51% of the votes of all of the general municipal employees* in the collective bargaining unit. If no representative receives at least 51% of the votes, at the expiration of the collective bargaining agreement, WERC must decertify the current representative and the general municipal employees will be nonrepresented. If a representative is decertified, the affected general municipal employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification. WERC must assess and collect a certification fee for each annual certification election, and the fees collected are credited to a WERC appropriation account.

Notwithstanding the above provision, the ***bill*** provides that each collective bargaining unit containing general municipal employees must vote to certify or decertify its representative in April 2011.

Labor Organization Dues

Under ***current law***, municipal employees may be required to pay labor organization dues in the manner provided in a fair-share agreement. A "fair-share agreement" is an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members.

The ***bill*** eliminates fair-share agreements for general municipal employees but continues to allow fair-share agreements for public safety employees.

In addition, the ***bill*** provides that a general municipal employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit, except that a public safety employee may be required to pay dues in the manner provided in a fair-share agreement.

Under ***current law***, it is a prohibited practice for a municipal employer to deduct dues from an employee's or supervisor's earnings, unless the employer has been presented with an individual order therefor, signed by the municipal employee personally, and terminable by at least the end of any year of its life or earlier by the municipal employee giving at least 30 days' written notice of such termination to the municipal employer and to the representative organization, except where there is a fair-share agreement in effect. The ***bill*** limits this provision to public safety employees.

Further, the ***bill*** prohibits a municipal employer from deducting dues from the earnings of a general municipal employee or supervisor.

Term of Collective Bargaining Agreement

Under ***current law***, the term of a collective bargaining agreement covering municipal employees who are not school district employees may not exceed three years. The term of a collective bargaining agreement covering school district employees may not exceed four years.

The ***bill*** provides that every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. Further, the ***bill*** provides that no collective bargaining agreement covering general municipal employees may be reopened for negotiations unless both parties agree to reopen the agreement.

Settlement of Disputes

Current law contains provisions relating to the settlement of disputes involving law enforcement and fire fighting personnel. The ***bill*** specifies that these provisions apply to public safety employees.

In addition, ***current law*** contains the following provisions relating to the settlement of disputes involving general municipal employees:

- Mediation: WERC or its designee must function as mediator in labor disputes involving municipal employees upon request of one or both of the parties or upon initiation of the WERC. The function of the mediator is to encourage voluntary settlement by the parties, and no mediator has the power of compulsion.

- Grievance arbitration: Parties to a dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have WERC or any other appropriate agency serve as arbitrator or may designate any other competent, impartial, and disinterested person to so serve.

- Voluntary impasse resolution procedures: A municipal employer and labor organization may agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of a collective bargaining agreement.

- Interest arbitration: If a dispute relating to one or more issues has not been settled after a reasonable period of negotiation and after mediation by WERC and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours, and conditions of employment to be included in a new collective bargaining agreement, either party or the parties jointly may petition WERC, in writing, to initiate compulsory, final, and binding arbitration.

- Factor given greatest weight: In making any decision under arbitration, except for any decision involving school district employees, the arbitrator or arbitration panel must consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency that places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.

- Factor given greater weight: In making any decision under arbitration, except for any decision involving school district employees, the arbitrator or arbitrator panel must consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to the factors described in the next bulletpoint.

- Other factors considered: In making any decision under arbitration, the arbitrator or arbitration panel must give weight to multiple factors, including the lawful authority of the municipal employer; stipulations of the parties; and interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

The ***bill*** repeals the above provisions, *except* the provisions relating to mediation and grievance arbitration.

Strikes

Under ***current law***, strikes by municipal employees or labor organizations are expressly prohibited, except under the following circumstances:

- A municipal employer and labor organization may agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of a collective bargaining agreement.

- Prior to an arbitration hearing, if both parties withdraw their final offers and mutually agreed upon modifications, the labor organization, after giving 10 days' advance notice, in writing, to the municipal employer and WERC, may strike.

The ***bill*** repeals these provisions and provides that strikes by municipal employees or labor organizations are expressly prohibited.

Declarations of Policy

Current law provides that the public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Further, current law states that it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representatives of the employees' own choice, and, if such procedures fail, the parties should have available to them a fair, speedy, effective, and peaceful procedure for settlement.

In addition, ***current law*** provides that the Legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit, and the health, safety, and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the Wisconsin Constitution and U.S. Constitution and by MERA.

The ***bill*** repeals these provisions.

Termination of Collective Bargaining Agreements

The ***bill*** provides that each collective bargaining unit containing general municipal employees who are subject to an extension of their collective bargaining agreement must have their agreement terminated as soon as legally possible.

State Employment Labor Relations

Covered Employees

The ***bill*** provides that research assistants of the University of Wisconsin (UW) -Madison, UW-Extension, UW-Milwaukee, UW-Eau Claire, UW-Green Bay, UW-La Crosse, UW-Oshkosh, UW-Parkside, UW-Platteville, UW-River Falls, UW-Stevens Point, UW-Stout, UW-Superior, and UW-Whitewater are covered employees under the State Employment Labor Relations Act (SELRA).

Subjects of Collective Bargaining

Under ***current law***, state employees generally have the right to collectively bargain with respect to wage rates, the assignment and reassignment of classifications to pay ranges, determination of an incumbent's pay status resulting from position reallocation or reclassification, and pay adjustments upon temporary assignment of classified employees to duties of a higher classification or downward reallocations of a classified employee's position; fringe benefits; and hours and conditions of employment. One exception to this requirement is that an employer is not required to bargain on matters related to employee occupancy of houses or other lodging provided by the state.

The ***bill*** continues to allow collective bargaining with respect to the above matters for public safety employees. A "public safety employee" is a member of the state traffic patrol or a state motor

vehicle inspector. In addition, the ***bill*** repeals the exception relating to employee occupancy of houses or other lodging.

However, the ***bill*** eliminates collective bargaining with respect to the above matters for general employees (employees who are not public safety employees). The ***bill*** maintains the right of employees to collectively bargain with respect to wages. Wages include only total base wages and excludes any other compensation, including overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

Under the ***bill***, the employer (State of Wisconsin) may not bargain collectively with general employees with respect to a proposal that does any of the following, unless the electors in a statewide referendum approve a total base wages increase that exceeds the total base wages expenditure described below:

- If there is an increase in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the CPI change.

- If there is a decrease in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement decreased by a percentage of that expenditure that is equal to the decrease in the CPI change.

Lastly, the ***bill*** requires that WERC provide, upon request, to the employer or any representative of a collective bargaining unit containing a general employee, the CPI change during any 12-month period. The WERC may get the information from DOR. At the request of WERC, DOR must determine the CPI change, based on the 12 months immediately preceding the request from WERC.

Collective Bargaining Unit

The ***bill*** creates a statewide collective bargaining unit for public safety employees.

Certification of Representative of Collective Bargaining Unit

Under ***current law***, a representative chosen by a *majority of the employees voting* in a collective bargaining unit is the exclusive representative of all employees in the unit for the purpose of collective bargaining. The representative remains in place unless the representative is decertified in a method provided under current law.

The ***bill*** provides that WERC must annually conduct an election, no later than December 1, to certify the representative of a collective bargaining unit that contains a general employee. The ballot must include the names of all labor organizations having an interest in representing the general employees participating in the election. WERC may exclude from the ballot one who, at the time of the election, stands deprived of his or her having engaged in an unfair labor practice. WERC must certify any representative that receives at least *51% of the votes of all of the general employees* in the collective

bargaining unit. If no representative receives at least 51% of the votes, at the expiration of the collective bargaining agreement, WERC must decertify the current representative and the general employees will be nonrepresented. If a representative is decertified, the affected general employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification. WERC's certification of the results of any election is conclusive unless reviewed under ch. 227, Stats. WERC must assess and collect a certification fee for each annual certification election, and the fees collected are credited to a WERC appropriation account.

Notwithstanding the above provision, the ***bill*** provides that each collective bargaining unit containing general employees must vote to certify or decertify its representative in April 2011.

Labor Organization Dues

Under ***current law***, employees may be required to pay labor organization dues in the manner provided in a fair-share agreement. A "fair-share agreement" is an agreement between the employer and a labor organization representing employees or supervisors under which all of the employees or supervisors in a collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members.

The ***bill*** eliminates fair-share agreements for general employees and supervisors but continues to allow fair-share agreements for public safety employees.

Under ***current law***, employees may be required to pay dues in the manner provided in a maintenance of membership agreement. A "maintenance of membership agreement" is an agreement between the employer and a labor organization representing employees or supervisors which requires that all of the employees or supervisors whose dues are being deducted from earnings at the time the agreement takes effect continue to have dues deducted for the duration of the agreement and that dues be deducted from the earnings of all employees or supervisors who are hired on or after the effective date of the agreement.

The ***bill*** eliminates maintenance of membership agreements for general employees and supervisors, but continues to allow maintenance of membership agreements for public safety employees.

In addition, the ***bill*** provides that a general employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit.

Under ***current law***, it is an unfair labor practice for an employer to deduct dues from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable by at least the end of any year of its life or earlier by the employee giving at least 30 but not more than 120 days' written notice of such termination to the employer and to the representative labor organization, except if there is a fair-share or maintenance of membership agreement in effect. The ***bill*** limits this provision to public safety employees.

Further, the ***bill*** prohibits an employer from deducting dues from the earnings of a general employee.

Term of Collective Bargaining Agreement

Under ***current law***, collective bargaining agreements must coincide with the fiscal year or biennium.

The ***bill*** provides that no agreements covering a collective bargaining unit containing a general employee may be for a period that exceeds one year, and each agreement must coincide with the fiscal year. Agreements covering a collective bargaining unit containing a general employee may not be extended. The ***bill*** retains current law for agreements covering public safety employees.

Declaration of Policy

Under ***current law***, SELRA provides that the public policy of the state as to labor relations and collective bargaining in state employment includes: (1) recognition of the interests of the public, employee, and employer; (2) orderly and constructive employment relations for employees and the efficient administration of state government; (3) negotiations of terms and conditions of state employment that result from voluntary agreement between the state and its employees, who may organize and bargain collectively through representatives; and (4) encouragement of the practices and procedures of collective bargaining in state employment by establishing standards of fair conduct in state employment relations and by providing a convenient, expeditious, and impartial tribunal in which these interests may have their respective rights determined.

The ***bill*** repeals this provision.

Termination of Collective Bargaining Agreements

The ***bill*** provides that, upon termination of any collective bargaining agreement between the state and a labor organization, the Director of the Office of State Employment Relations (OSER) may continue to administer those provisions of the agreements that the Director determines necessary for the orderly administration of the State Civil Services System until the compensation plan is established for the 2011-13 Fiscal Biennium.

UW System Faculty and Academic Staff Labor Relations

Under ***current law***, UW System faculty and academic staff have the right to collectively bargain with the state.

The ***bill*** eliminates collective bargaining for UW System faculty and academic staff.

UW Hospitals and Clinics Authority, Child Care Providers, Home Care Providers, and Local Cultural Arts Districts

Under ***current law***, certified or licensed child care providers who provide care and supervision for not more than eight children who are not related to the provider, employees of the UW Hospitals and Clinics Authority, and home care providers have the right to collectively bargain with their employers.

The ***bill*** eliminates collective bargaining for child care providers, employees of the UW Hospitals and Clinics Authority, and home care providers. Further, the ***bill*** eliminates the Wisconsin

Quality Home Care Authority and transfers its assets, liabilities, tangible personal property, and contracts to the Department of Health Services (DHS).

In addition, ***current law*** provides that employees of local cultural arts districts have the right to collectively bargain with local cultural arts districts under subch. I of ch. 111, Stats. The ***bill*** transfers the collective bargaining rights of employees of local cultural arts districts to MERA, thus such an employee would be a general municipal employee for purposes of MERA.

Initial Applicability

The provisions of the bill relating to collective bargaining first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with the bill's provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

WERC

The ***bill*** requires that the Department of Administration (DOA) evaluate the staffing requirements of WERC and submit the report of the evaluation to the Joint Committee on Finance.

PUBLIC SECTOR RETIREMENT SYSTEMS

Modifications to the Employee and Employer Retirement Contributions to the WRS

Under current law, the Employee Trust Funds (ETF) Board, in consultation with actuaries, annually determines the total actuarial contribution required to fund the WRS. This total contribution is the sum of three components: the employee rate; the employer rate; and the benefit adjustment contribution (BAC). Employer contributions to the WRS vary depending upon the type of position held by the employee. Employee contributions are currently required as follows:

1. For general employees, 5 % of earnings;

2. For elected officials and executive employees, 5.5% of earnings;

3. For protective occupations covered by Social Security, 6% of earnings; and

4. For protective occupations not covered by Social Security, 8% of earnings.

Employer contributions (currently 5.1%) are generally paid by the employer, except that any contribution increase after 1989 is required to be distributed between the employer and the employee, with one-half of the increase paid by the employer and the other half of the increase added to the BAC portion of the total contribution. The BAC was created to fund WRS retirement improvements established under 1983 Wisconsin Act 141. The employee is responsible for paying BAC contributions unless the employer agrees to cover the cost (generally through collective bargaining). Currently, state employers are responsible for 1.3% of the BAC and general employees, .2%. A BAC is not necessary for the protective or elected official and executive categories.

While current law requires an employer to pay the full employer contribution, it also provides that an employer may pay all or part of the employee required contributions. This is generally derived through bargaining or the compensation plan. At this time, most state employers have agreed to pay the employee contribution (up to 5%) and 1.3% of the BAC for general employees. Protective occupations pay the portion of the employee contribution that exceeds 5%.

The ***bill*** eliminates the BAC as a separate contribution, instead incorporating the BAC costs into the total actuarially defined contribution. The bill requires that the contribution rate for general employees and elected officials and executive employees must equal one-half of all actuarially required contributions, as approved by the ETF Board. Protective occupation employees are required to pay a contribution that is equal to the percentage of earnings paid by the general employees.

The ***bill*** prohibits an employer from paying, on behalf of any employee, any of the employee's share of the actuarially required contributions under the WRS or under an employee retirement system of a 1st class city or county having a population of 500,000 or more (Milwaukee County and City Employees Retirement Systems). The bill also prohibits any local governmental unit from establishing a defined benefit pension plan for its employees unless the plan requires the employees to pay half of all actuarially required contributions for funding plan benefits. It also prohibits the local governmental unit from paying, on behalf of an employee, any of the employee's share of the actuarially required contributions.

These provisions are prospective and would take effect on the first pay period following March 13, 2011, for non-represented employees, elected officials, and judges and justices, and on the expiration, termination, extension, modification, or renewal of the collective bargaining agreement, whichever occurs first, for represented employees.

Reduction in the Retirement Formula Multiplier for Elected Officials and Executive Employee Participants

Under current law, when a WRS participant becomes eligible to receive a retirement annuity, assuming the participant is not planning to receive a money purchase annuity, the amount of the annuity is determined by multiplying the participant's final average earnings by the participant's years of creditable service by a percentage multiplier. The multiplier is currently 1.6% for general employees, 2% for elected officials and executive employees, 2% for protectives covered by Social Security, and 2.5% for protectives not covered by Social Security.

The ***bill*** decreases the multiplier for elected officials and executive employees from 2% to 1.6%, the equivalent of the current general employee formula.

This provision is also prospective and would take effect on the first pay period following March 13, 2011, for non-represented employees; upon the expiration, termination, extension, modification, or renewal of the collective bargaining agreement, whichever occurs first; for elected officials on the first day of the term of office beginning after the effective date of the bill; and for judges and justices on the first day a judge or justice assumes office following the effective date of the bill.

Elimination of LTE Participation in the WRS

Current law provides that state employees become participating employees in the WRS if they are expected to work at least one-third of what is determined full-time employment by ETF (600 hours for non-teachers and 440 hours for teachers and educational support employees) and have an expected duration of employment of one year or more. If the state employee becomes a participating employee in the WRS, he or she is also entitled to receive certain health insurance benefits. There is currently a group of state employees that are appointed to state civil service positions for limited terms, meaning they hold provisional positions or appointments for less than 1,044 hours per year.

The ***bill*** prohibits state employees who have limited-term appointments from participating in the WRS and from receiving the associated health insurance benefits.

Benefit Study

The ***bill*** requires that the DOA Secretary, the OSER Director, and the Secretary of the Department of Employee Trust Funds (DETF) study the structure of the WRS and benefits provided under the WRS and report their findings and recommendations to the Governor no later than June 30, 2012. The study must specifically address the following issues:

- Establishing a defined contribution plan as an option for participating employees.
- Establishing a vesting period of one, five, or 10 years for employer contributions and for eligibility for retirement benefits.
- Modifying the supplemental health insurance premium credit program.
- Permitting employees to not make employee required contributions and limiting retirement benefits for employees who do not make employee required contributions to a money purchase annuity.

PUBLIC SECTOR GROUP INSURANCE

Health Insurance Premiums for State Employees

Under ***current law***, the employer generally must pay not less than 80% of the average premium cost of plans offered in the tier with the lowest employee premium cost, except as provided in a collective bargaining agreement, unless a different amount is recommended by the OSER Director and approved by the Joint Committee on Employment Relations (JCOER).

The ***bill*** requires that the employer generally pay an amount not more than 88% of the average premium cost of plans offered in the tier with the lowest employee premium cost, except as otherwise provided in a collective bargaining agreement. The OSER Director must annually establish the amount that the employer is required to pay.

However, the ***bill*** specifies health insurance premium amounts to be paid by state employees in 2011. Beginning with health insurance premiums paid in April 2011, and ending with coverage for December 2011, most state employees must pay $84 a month for individual coverage and $208 a month

for family coverage under any plan offered in the tier with the lowest employee premium cost; $122 a month for individual coverage and $307 a month for family coverage under any plan offered in the tier with the next lowest employee premium cost; and $226 a month for individual coverage and $567 a month for family coverage under any plan offered in the tier with the highest employee premium cost. However, any person employed as a teaching assistant or graduate assistant and other employees-in-training as designated by the UW Board of Regents, who are employed on at least a one-third full-time basis, must pay 50% of the amount described above. Further, insured part-time employees who are appointed to work less than 1,566 hours per year and craft employees must pay the same amounts that they are required to pay on the day before this bill's effective date.

Lastly, the ***bill*** requires that the DETF Secretary allocate $28,000,000 from reserve accounts to reduce employers costs for providing group health insurance for state employees for the period beginning on July 1, 2011, and ending on December 31, 2011.

Health Insurance Premiums for Municipal Employees

Current law provides that any employer, other than the state, may offer to all of its employees a health care coverage plan through a program offered by the Group Insurance Board.

The ***bill*** provides that, beginning on January 1, 2012, except as otherwise provided in a collective bargaining agreement, an employer may not offer a health care coverage plan to its employees under this provision if the employer pays more than 88% of the average premium cost of plans offered in any tier with the lowest employee premium cost.

Health Care Coverage Plans for 2012-13

The ***bill*** requires that the Group Insurance Board design health care coverage plans for the 2012 calendar year that, after adjusting for any inflationary increase in health benefit costs, reduces the average premium cost of plans offered in the tier with the lowest employee premium cost by at least 5% from the cost of such plans offered during the 2011 calendar year. The Group Insurance Board must include copayments in the plans for the 2012 calendar year and may require health risk assessments for state employees and participation in wellness or disease management programs.

Current law provides that the Group Insurance Board may not enter into any agreements to modify or expand group insurance coverage in a manner that conflicts with ch. 40, Stats., or DETF rules or materially affects the level of premiums required to be paid by the state or its employees, or the level of benefits to be provided, under any group insurance coverage. The ***bill*** provides that this provision does not apply to any agreements entered into by the Group Insurance Board to modify group insurance coverage for the 2012 and 2013 calendar years.

Eligibility of Dependents

The ***bill*** provides that if DETF determines that an audit of benefit programs administered by DETF is necessary for the purpose of verifying the eligibility of dependents covered under the benefit programs, DETF must submit a written request to the DOA Secretary to expend an amount not exceeding $700,000 for the 2011-12 fiscal year to fund the cost of the audit. If the DOA Secretary approves the request, DETF may proceed with the audit.

Eligible Employees

Under ***current law***, any person employed as a graduate assistant and other employees-in-training as designated by the UW Board of Regents, who are employed on at least a one-third full-time basis, are eligible for group health insurance coverage. The ***bill*** adds teaching assistants to this provision.

Initial Applicability

The provisions of the bill relating to health care coverage premiums first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with the bill's provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

Group Insurance Board

Under ***current law***, the membership of the Group Insurance Board includes the Governor, the Attorney General, the DOA Secretary, the OSER Director, and the Commissioner of Insurance, or their designees. The ***bill*** requires that the designee of the Attorney General be an attorney.

The ***bill*** allows the Group Insurance Board to contract for any consulting services related to plans offered by the Group Insurance Board.

Study

The ***bill*** requires that the OSER Director and the DETF Secretary study the feasibility of offering to employees, beginning on January 1, 2013, the options of receiving health care coverage through either a low-cost health care coverage plan or through a high-deductible health plan and the establishment of a health savings account. The OSER Director and the DETF Secretary must also study the feasibility of requiring state employees to receive health care coverage through a health benefits exchange and creating a health care insurance purchasing pool for all state and local government employees and individuals receiving health care coverage under MA. The OSER Director and the DETF Secretary must report their findings and recommendations to the Governor no later than June 30, 2012.

STATE CIVIL SERVICE

Compensation Plan

The ***bill*** provides that if an employee is covered under a collective bargaining agreement under SELRA, the compensation plan applies to that employee, except for those provisions relating to matters that are subject to bargaining.

Limited-Term Appointments

The ***bill*** provides that an individual with a limited-term appointment is not eligible for group insurance and retirement benefits.

Unexcused Absences

The ***bill*** provides that during a state of emergency declared by the Governor under s. 323.10, Stats., an appointing authority may discharge an employee who does any of the following:

- Fails to report to work as scheduled for any three working days during the state of emergency and the employee's absences from work are not approved leaves of absence.

- Participates in a strike, work stoppage, sit-down, stay-in, slowdown, or other concerted activities to interrupt the operations or services of state government, including specifically participation in purported mass resignations or sick calls.

Further, the ***bill*** provides that engaging in the above activity constitutes just cause for discharge. Before discharging an employee, the appointing authority must provide the employee notice of the action and furnish to the employee, in writing, the reasons for the action. The appointing authority must provide the employee an opportunity to respond to the reasons for the discharge.

Career Executive Program

The ***bill*** provides that an appointing authority may reassign an employee in a career executive position to a career executive position in any agency if the appointing authority in the agency to which the employee is to be reassigned approves of the reassignment.

Unclassified Division Administrators

The ***bill*** increases the number of unclassified division administrator positions by 35 positions. The ***bill*** also decreases the number of positions in executive branch agencies by 36 positions, which are to be identified by the DOA Secretary.

Current law provides that division administrators include all administrator positions specifically authorized by law to be employed outside the classified service in each department, board, or commission and the historical society. The ***bill*** provides that division administrators also include any other managerial position determined by an appointing authority.

The ***bill*** allows the OSER Director to appoint a deputy director outside the classified service.

Contracts for Contractual Services

Under ***current law***, the OSER Director, prior to award, under conditions established by DOA rule, must review contracts for contractual services in order to ensure that agencies properly utilize the services of state employees; evaluate the feasibility of using limited-term appointments prior to entering into a contract; and do not enter into any contract in conflict with any collective bargaining agreement. The ***bill*** repeals this provision.

HEALTH AND HUMAN SERVICES

MA and Public Assistance

The MA Program

The ***bill*** requires DHS to study potential changes to the MA state plan and to waivers of federal law relating to MA obtained from the federal Department of Health and Human Services (DHHS) for all of the following purposes:

- Increasing the cost effectiveness and efficiency of care and the care delivery system for MA programs.
- Limiting switching from private health insurance to MA programs.
- Ensuring the long-term viability and sustainability of MA programs.
- Advancing the accuracy and reliability of eligibility for MA programs and claims determinations and payments.
- Improving the health status of individuals who receive benefits under a MA program.
- Aligning MA program benefit recipient and service provider incentives with health care outcomes.
- Supporting responsibility and choice of MA recipients.

If DHS determines, as a result of the study that revision of existing statutes or rules would be necessary to advance a purpose described above, DHS may promulgate rules that do any of the following related to MA programs:

- Require cost sharing from program benefit recipients up to the maximum allowed by federal law or a waiver of federal law.
- Authorize providers to deny care or services if a program benefit recipient is unable to share costs, to the extent allowed by federal law or waiver.
- Modify existing benefits or establish various benefit packages and offer different packages to different groups of recipients.
- Revise provider reimbursement models for particular services.
- Mandate that program benefit recipients enroll in managed care.
- Restrict or eliminate presumptive eligibility.

- To the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States.

- Set standards for establishing and verifying eligibility requirements.

- Develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility.

- Reduce income levels for purposes of determining eligibility to the extent allowed by federal law or waiver and subject to the ability of the state DHS to obtain a waiver from provisions of the federal health care reform law.

Before promulgating a rule, DHS must submit to the Joint Committee on Finance the proposed rule and any plan that DHS develops as a result of the study. The committee has a 14-day passive review period, and if the committee takes no action within that time, the proposed rule may be promulgated, and the plan may be implemented. The rule may be promulgated as an emergency rule nothwithstanding the requirements in s. 227.24 (1) (a) and (3), Stats.

DHS must submit an amendment to the state MA plan or request a waiver of federal laws related to MA, if necessary, to the extent necessary to implement any rule promulgated above.

If the federal DHHS does not allow the amendment or does not grant the waiver, the DHS may not put the rule into effect or implement the action described in the rule.

The DHS must request a waiver from the Secretary of the federal DHHS to permit the department to have in effect eligibility standards, methodologies, and procedures under the state MA plan or waivers of federal laws related to MA that are more restrictive than those in place under the federal Patient Protection and Affordable Care Act (PPACA). If the waiver request does not receive federal approval before December 31, 2011, the department shall reduce income levels on July 1, 2012, for the purposes of determining eligibility to 133% of the federal poverty line for adults who are not pregnant and not disabled, to the extent permitted under federal law.

Memorandum of Understanding With Milwaukee County Employees

Current law provides that the DHS may enter into a memorandum of understanding, with the certified representative of Milwaukee County employees performing services for the administration of enrollment services for various public assistance programs. If there is a dispute as to hours or conditions of employment that remains between the DHS and the certified representative after a good faith effort to resolve it, the DHS may unilaterally resolve the dispute.

Current law also provides the DHS may enter into a memorandum of understanding with the certified representative of Milwaukee County employees performing child care services in the county. If there is a dispute as to hours or conditions of employment that remains between the DHS and the certified representative after a good faith effort to resolve it, the DHS may unilaterally resolve the dispute.

The ***bill*** repeals these provisions.

FISCAL CHANGES

Children and Families

This ***bill*** increases the appropriation for the federal Temporary Assistance for Needy Families (TANF) federal block grant fund by $37,000,000 for fiscal year 2011-12, to support an increase in the earned income tax credit. The increased TANF funds are allocated to DOR for the tax credit.

Corrections

The ***bill*** increases the appropriation to operate adult correctional institutions and provide field and administrative services by $19,537,900 for fiscal year 2011-12. The bill also transfers funds from other Department of Corrections appropriations to the adult correctional institutions appropriation.

Health Services

The ***bill*** decreases the community aids appropriation in DHS by $3,100,000 in fiscal year 2011-12. In addition for fiscal year 2011-12, the bill increases the MA general purpose revenue appropriation by $127,200,000 for fiscal year 2011-12; the MA administration appropriation by $16,000,000; the income maintenance appropriation by $2,500,000; the MA trust fund by $6,700,000; and the MA program benefits appropriation by $6,800,000.

Joint Committee on Finance

The appropriation to the Joint Committee of Finance to supplement general fund appropriations due to emergencies is decreased by $4,590,400 for fiscal year 2011-12.

Lapses

The ***bill*** requires lapses from the executive, judicial, and legislative branches of government to capture employers' savings that are expected to result from an increase in employee health insurance premium and retirement contributions.

UW HOSPITALS AND CLINICS BOARD AND UW HOSPITALS AND CLINICS AUTHORITY

The ***bill*** eliminates the UW Hospitals and Clinics Board. Any contractual services agreement between the Board and the UW Hospitals and Clinics Authority is terminated on the effective date of the bill. Also on that date, all employees of the Board are transferred to the Authority, which must adhere to the terms of any collective bargaining agreement covering the employees that is in force at that time. Upon termination of the collective bargaining agreement, the Authority must establish the compensation and benefits of the employees.

Current law requires that the board of directors for the UW Hospitals and Clinics Authority include two nonvoting members appointed by the Governor, one of whom must be an employee or a representative of a labor organization recognized or certified to represent employees of the Authority and one of whom must be an employee or a representative of a labor organization recognized or certified to represent employees of the UW Hospitals and Clinics Board. The ***bill*** repeals this provision.

STATE-OWNED HEATING, COOLING, AND POWER PLANTS

The ***bill*** provides that DOA may sell any state-owned heating, cooling, and power plant or may contract with a private entity for the operation of such plant, with or without solicitation of bids, for any amount that DOA determines to be in the best interest of the state. No approval or certification of the Public Service Commission (PSC) is necessary for a public utility to purchase or contract for the operation of such plant, and any such purchase is considered to be in the public interest and to comply with the criteria for certification of a project under s. 196.49 (3) (b), Stats.

Under the ***bill***, if there is outstanding public debt used to finance the acquisition, construction, or improvement of any plant that is sold, DOA must deposit a sufficient amount of the net proceeds from the sale of the property in the bond security and redemption fund to repay the principal and pay the interest on the debt and any premium due upon refunding of the debt. If the property was acquired, constructed, or improved with federal financial assistance, DOA must repay to the federal government any of the net proceeds required by federal law. In general, if there is no debt outstanding or there are no moneys payable to the federal government, or if the net proceeds exceed the amount required to be deposited or paid, DOA must deposit the net proceeds or remaining net proceeds in the budget stabilization fund.

In addition, the ***bill*** provides that if DOA sells or contracts for the operation of any state-owned heating, cooling, and power plant, DOA may attach such conditions to the sale or contract as it finds to be in the best interest of the state. Unless otherwise expressly agreed between the parties, the contract must provide that the purchaser or contractor will continue to operate the plant and keep the plant in good repair and will provide adequate and sufficient heating, cooling, and power to meet the state's current and future needs. The contract must also require the purchaser or contractor to submit to the jurisdiction of the PSC if the PSC will regulate the purchase or contractor as a public utility. If the purchaser or contractor is not a public utility, the PSC must, upon petition by DOA, regulate the purchaser or contractor as a public utility if the PSC determines that such regulation is in the public interest.

The ***bill*** requires that the DOA Secretary require the submission of expenditure estimates for each state agency that proposes to expend moneys from any appropriation for the operation of a state-owned heating, cooling, and power plant during any fiscal biennium in which the plant is sold or in which DOA contracts for the operation of the plant. The DOA must disapprove any estimate for any period during which that plant is owned or operated by a private entity. Then, the DOA Secretary may require the use of the amounts of any disapproved expenditure estimates for the purpose of purchase of contractual services relating to heating, cooling, or power for state facilities or payment of the costs of purchasing heating, cooling, or power for the state agencies or facilities for which the amounts were appropriated. If DOA sells or contracts for the operation of any state-owned heating, cooling, and power plant, the DOA Secretary may identify any full-time equivalent (FTE) positions authorized for the state agency that has operating authority for the plant, the duties of which primarily relate to the management or operation of the plant, and may decrease the authorized FTE positions for that state agency by the number of positions so identified effective on the date that the state agency no longer has operating authority for the plant.

Lastly, the ***bill*** allows the DOA Secretary to lapse or transfer to the general fund from the unencumbered balances of general purpose revenue and program revenue appropriations to any state

agency, other than sum sufficient appropriations and appropriations of federal revenues, any amount appropriated to a state agency that is determined by the DOA Secretary to be allocated for the purpose of management or operation of a plant that is sold or the operation of which is contracted effective on the date that the state agency to which the moneys are appropriated no longer has operating authority for the plant. The DOA Secretary must notify the Co-Chairpersons of the Joint Committee on Finance of any action taken under this paragraph and the previous paragraph.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

JKR:LR:DWS:ksm