

ASSEMBLY BILL NO. 365—ASSEMBLYMEN
KIRNER AND HICKEY

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to the Public Employees' Benefits Program. (BDR 23-604)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets **[omitted-material]** is material to be omitted.

AN ACT relating to the Public Employees' Benefits Program; revising the procedure for the Board of the Public Employees' Benefits Program to contract with a vendor; authorizing the Board to appoint an attorney who specializes in health plans and health care law; eliminating the requirement that the Commissioner of Insurance approve certain contracts entered into by the Board; making various changes concerning the Executive Officer of the Board; revising provisions governing the authority for certain groups to leave the Program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law establishes the Public Employees' Benefits Program and the
2 Board of the Public Employees' Benefits Program to administer the Program. (NRS
3 287.0402-287.049) **Section 1** of this bill establishes a procedure to allow the Board
4 to participate in the selection of certain vendors. **Section 3** of this bill revises the
5 procedure for annual reviews of the performance of the Executive Officer of the
6 Board. **Section 4** of this bill eliminates the requirement that the Governor approve
7 the employment of the Executive Officer. **Section 5** of this bill allows the Board to
8 appoint an attorney who specializes in health plans and health care law. **Section 6**
9 of this bill eliminates the requirement that the Commissioner of Insurance approve
10 certain contracts entered into by the Board. **Section 7** of this bill revises the
11 provisions governing the authority for groups of 300 or more employees leaving the
12 Program to secure insurance from another source. **Section 8** of this bill authorizes
13 the Executive Officer to observe the activities of a committee formed to evaluate
14 contracts awarded on behalf of the Board.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 287 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *The Board shall review any recommendation for awarding a contract submitted to the Board pursuant to NRS 333.335. The Board may:*

(a) *Approve the recommendation of the Chief of the Purchasing Division of the Department of Administration or of a committee appointed to evaluate a proposal and award the contract as recommended; or*

(b) *Schedule a separate public meeting to award the contract.*

2. *If the Board conducts a separate meeting pursuant to paragraph (b) of subsection 1, it may interview representatives of any one or more of the proposed vendors and shall award the contract based on the best interests of the State. The Board is not bound by the recommendation of the Chief of the Purchasing Division or the committee appointed to evaluate the proposal.*

Sec. 2. NRS 287.0402 is hereby amended to read as follows:

287.0402 As used in NRS 287.0402 to 287.049, inclusive, ***and section 1 of this act***, unless the context otherwise requires, the words and terms defined in NRS 287.0404 to 287.04064, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NRS 287.0415 is hereby amended to read as follows:

287.0415 1. A majority of the members of the Board constitutes a quorum for the transaction of business.

2. The Governor shall designate one of the members of the Board to serve as the Chair.

3. The Board shall meet at least once every calendar quarter and at other times upon the call of the Chair.

4. The Board may meet in closed session:

(a) To discuss matters relating to personnel;

(b) With investment counsel to plan future investments or establish investment objectives and policies;

(c) With legal counsel to receive advice upon claims or suits by or against the Program;

(d) To prepare a request for a proposal or other solicitation for bids to be released by the Board for competitive bidding; or

(e) As otherwise provided pursuant to chapter 241 of NRS.

5. *The Board may conduct an annual review of the performance of the Executive Officer. After receiving public comment during an open meeting, the Board may meet in closed session to conduct the review. The Board shall conduct any vote concerning the review after returning to an open meeting. The*



provisions of NRS 241.033 do not apply to the annual review of the performance of the Executive Officer.

6. Except as otherwise provided in this subsection, if the Board causes a meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS, the Board shall post a transcript of the meeting on its Internet website not later than 30 days after the meeting. The Board shall post a transcript of a closed session of the Board on its Internet website when the Board determines that the matters discussed no longer require confidentiality and, if applicable, the person whose character, conduct, competence or health was discussed in the closed session has consented to the posting.

~~6-1~~ 7. The Board may appoint such advisory committees as it deems necessary to assist the Board in carrying out its duties pursuant to NRS 287.0402 to 287.049, inclusive.

~~7-1~~ 8. As used in this section, "request for a proposal" has the meaning ascribed to it in subsection 8 of NRS 333.020.

Sec. 4. NRS 287.0424 is hereby amended to read as follows:

287.0424 1. The Board shall employ an Executive Officer. ~~† subject to the approval of the Governor.†~~ The Executive Officer is in the unclassified service of the State and serves at the pleasure of the Board. The Board may delegate to the Executive Officer the exercise or discharge of any power, duty or function vested in or imposed upon the Board.

2. The Executive Officer must:

(a) Be a graduate of a 4-year college or university with a degree in business administration or public administration or an equivalent degree, as determined by the Board; and

(b) Possess at least 5 years' experience in a high-level administrative or executive capacity in the field of insurance, management of employees' benefits or risk management, including, without limitation, responsibility for a variety of administrative functions such as personnel, accounting, data processing or the structuring of insurance programs.

3. Except as otherwise provided in NRS 284.143, the Executive Officer shall not pursue any other business or occupation or perform the duties of any other office of profit during normal office hours unless on leave approved in advance. The Executive Officer shall not participate in any business enterprise or investment:

(a) With any vendor or provider to the Program; or

(b) In real or personal property if the Program owns or has a direct financial interest in that enterprise or property.



1 4. The Executive Officer is entitled to an annual salary fixed by
2 the Board. The salary of the Executive Officer is exempt from the
3 limitations set forth in NRS 281.123.

4 **Sec. 5.** NRS 287.043 is hereby amended to read as follows:

5 287.043 1. The Board shall:

6 (a) Establish and carry out a program to be known as the Public
7 Employees' Benefits Program which:

8 (1) Must include a program relating to group life, accident or
9 health insurance, or any combination of these; and

10 (2) May include:

11 (I) A plan that offers flexibility in benefits, and for which
12 the rates must be based only on the experience of the participants in
13 the plan and not in combination with the experience of participants
14 in any other plan offered under the Program; or

15 (II) A program to reduce taxable compensation or other
16 forms of compensation other than deferred compensation,

17 ➔ for the benefit of all state officers and employees and other
18 persons who participate in the Program.

19 (b) Ensure that the Program is funded on an actuarially sound
20 basis and operated in accordance with sound insurance and business
21 practices.

22 2. In establishing and carrying out the Program, the Board
23 shall:

24 (a) For the purpose of establishing actuarial data to determine
25 rates and coverage for active and retired state officers and
26 employees and their dependents, commingle the claims experience
27 of such active and retired officers and employees and their
28 dependents for whom the Program provides primary health
29 insurance coverage into a single risk pool.

30 (b) Except as otherwise provided in this paragraph, negotiate
31 and contract pursuant to paragraph (a) of subsection 1 of NRS
32 287.025 with the governing body of any county, school district,
33 municipal corporation, political subdivision, public corporation or
34 other local governmental agency of the State of Nevada that wishes
35 to obtain exclusive group insurance for all of its active and retired
36 officers and employees and their dependents, except as otherwise
37 provided in sub-subparagraph (III) of subparagraph (2) of paragraph
38 (h), by participation in the Program. The Board shall establish
39 separate rates and coverage for active and retired officers and
40 employees of those local governmental agencies and their
41 dependents based on actuarial reports that commingle the claims
42 experience of such active and retired officers and employees and
43 their dependents for whom the Program provides primary health
44 insurance coverage into a single risk pool.



(c) Except as otherwise provided in paragraph (d), provide public notice in writing of any proposed changes in rates or coverage to each participating public agency that may be affected by the changes. Notice must be provided at least 30 days before the effective date of the changes.

(d) If a proposed change is a change in the premium or contribution charged for, or coverage of, health insurance, provide written notice of the proposed change to all participants in the Program. The notice must be provided at least 30 days before the date on which a participant in the Program is required to select or change the participant's policy of health insurance.

(e) Purchase policies of life, accident or health insurance, or any combination of these, or, if applicable, a program to reduce the amount of taxable compensation pursuant to 26 U.S.C. § 125, from any company qualified to do business in this State or provide similar coverage through a plan of self-insurance established pursuant to NRS 287.0433 for the benefit of all eligible participants in the Program.

(f) Except as otherwise provided in this title, develop and establish other employee benefits as necessary.

(g) Investigate and approve or disapprove any contract proposed pursuant to NRS 287.0479.

(h) Adopt such regulations and perform such other duties as are necessary to carry out the provisions of NRS 287.010 to 287.245, inclusive, including, without limitation, the establishment of:

(1) Fees for applications for participation in the Program and for the late payment of premiums or contributions;

(2) Conditions for entry and reentry into and exit from the Program by local governmental agencies pursuant to paragraph (a) of subsection 1 of NRS 287.025, which:

(I) Must include a minimum period of 4 years of participation for entry into the Program;

(II) Must include a requirement that participation of any retired officers and employees of the local governmental agency whose last continuous period of enrollment with the Program began after November 30, 2008, terminates upon termination of the local governmental agency's contract with the Program; and

(III) May allow for the exclusion of active and retired officers and employees of the local governmental agency who are eligible for health coverage from a health and welfare plan or trust that arose out of collective bargaining under chapter 288 of NRS or a trust established pursuant to 29 U.S.C. § 186;

(3) Procedures by which a group of participants in the Program may leave the Program pursuant to NRS 287.0479 and



1 conditions and procedures for reentry into the Program by those
2 participants;

3 (4) Specific procedures for the determination of contested
4 claims;

5 (5) Procedures for review and notification of the termination
6 of coverage of persons pursuant to paragraph (b) of subsection 4 of
7 NRS 287.023; and

8 (6) Procedures for the payments that are required to be made
9 pursuant to paragraph (b) of subsection 4 of NRS 287.023.

10 (i) Appoint an independent certified public accountant. The
11 accountant shall:

12 (1) Provide an annual audit of the Program; and

13 (2) Report to the Board and the Interim Retirement and
14 Benefits Committee of the Legislature created pursuant to
15 NRS 218E.420.

16 (j) Appoint an attorney who specializes in employee benefits.
17 The attorney shall:

18 (1) Perform a biennial review of the Program to determine
19 whether the Program complies with federal and state laws relating to
20 taxes and employee benefits; and

21 (2) Report to the Board and the Interim Retirement and
22 Benefits Committee of the Legislature created pursuant to
23 NRS 218E.420.

24 ***(k) Appoint an attorney who specializes in health plans and***
25 ***health care law. The attorney shall provide legal services to the***
26 ***Board.***

27 3. The Board shall submit an annual report regarding the
28 administration and operation of the Program to the Director of the
29 Legislative Counsel Bureau for transmittal to the appropriate
30 committees of the Legislature, or to the Legislative Commission
31 when the Legislature is not in regular session, for acceptance or
32 rejection not more than 6 months before the Board establishes rates
33 and coverage for participants for the following plan year. The report
34 must include, without limitation:

35 (a) Detailed financial results for the Program for the preceding
36 plan year, including, without limitation, identification of the sources
37 of revenue for the Program and a detailed accounting of expenses
38 which are segregated by each type of benefit offered by the
39 Program, and administrative costs. The results must be provided
40 separately concerning:

41 (1) Participants who are active and retired state officers and
42 employees and their dependents;

43 (2) All participants in the Program other than those described
44 in subparagraph (1); and



(3) Within the groups described in subparagraphs (1) and (2), active participants, retired participants for which the Program provides primary health insurance coverage and retired participants in the Program who are provided coverage for medical or hospital service, or both, by the Health Insurance for the Aged Act, 42 U.S.C. §§ 1395 et seq., or a plan that provides similar coverage.

(b) An assessment of actuarial accuracy and reserves for the current plan year and the immediately preceding plan year.

(c) A summary of the plan design for the current plan year, including, without limitation, information regarding rates and any changes in the vendors with which the Program has entered into contracts, and a comparison of the plan design for the current plan year to the plan design for the immediately preceding plan year. The information regarding rates provided pursuant to this paragraph must set forth the costs for participation in the Program paid by participants and employers on a monthly basis.

(d) A description of all written communications provided generally to all participants by the Program during the preceding plan year.

(e) A discussion of activities of the Board concerning purchasing coalitions.

4. The Board may use any services provided to state agencies and shall use the services of the Purchasing Division of the Department of Administration to establish and carry out the Program.

5. The Board may make recommendations to the Legislature concerning legislation that it deems necessary and appropriate regarding the Program.

6. A participating public agency is not liable for any obligation of the Program other than indemnification of the Board and its employees against liability relating to the administration of the Program, subject to the limitations specified in NRS 41.0349.

7. As used in this section, "employee benefits" includes any form of compensation provided to a public employee except federal benefits, wages earned, legal holidays, deferred compensation and benefits available pursuant to chapter 286 of NRS.

Sec. 6. NRS 287.0434 is hereby amended to read as follows:
287.0434 The Board may:

1. Use its assets only to pay the expenses of health care for its members and covered dependents, to pay its employees' salaries and to pay administrative and other expenses.

2. Enter into contracts relating to the administration of the Program, including, without limitation, contracts with licensed administrators and qualified actuaries. ~~Each such contract with a licensed administrator;~~



~~1 (a) Must be submitted to the Commissioner of Insurance not less
2 than 30 days before the date on which the contract is to become
3 effective for approval as to the reasonableness of administrative
4 charges in relation to contributions collected and benefits provided.~~

~~5 (b) Does not become effective unless approved by the
6 Commissioner.~~

~~7 (c) Shall be deemed to be approved if not disapproved by the
8 Commissioner within 30 days after its submission.}]~~

9 3. Enter into contracts with physicians, surgeons, hospitals,
10 health maintenance organizations and rehabilitative facilities for
11 medical, surgical and rehabilitative care and the evaluation,
12 treatment and nursing care of members and covered dependents.
13 The Board shall not enter into a contract pursuant to this subsection
14 unless:

15 (a) Provision is made by the Board to offer all the services
16 specified in the request for proposals, either by a health maintenance
17 organization or through separate action of the Board.

18 (b) The rates set forth in the contract are based on:

19 (1) For active and retired state officers and employees and
20 their dependents, the commingled claims experience of such active
21 and retired officers and employees and their dependents for whom
22 the Program provides primary health insurance coverage in a single
23 risk pool; and

24 (2) For active and retired officers and employees of public
25 agencies enumerated in NRS 287.010 that contract with the Program
26 to obtain group insurance by participation in the Program and their
27 dependents, the commingled claims experience of such active and
28 retired officers and employees and their dependents for whom the
29 Program provides primary health insurance coverage in a single risk
30 pool.

31 4. Enter into contracts for the services of other experts and
32 specialists as required by the Program.

33 5. Charge and collect from an insurer, health maintenance
34 organization, organization for dental care or nonprofit medical
35 service corporation, a fee for the actual expenses incurred by the
36 Board or a participating public agency in administering a plan of
37 insurance offered by that insurer, organization or corporation.

38 6. Charge and collect the amount due from local governments
39 pursuant to paragraph (b) of subsection 4 of NRS 287.023. If the
40 payment of a local government pursuant to that provision is
41 delinquent by more than 90 days, the Board shall notify the
42 Executive Director of the Department of Taxation pursuant to
43 NRS 354.671.



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Sec. 7. NRS 287.0479 is hereby amended to read as follows:

287.0479 1. If approved by the Board pursuant to this section, a group of not less than 300 active state officers or employees or retired state officers or employees, or ~~any combination thereof,~~ **both**, that participate in the Program may leave the Program and secure life, accident or health insurance, or any combination thereof, for the group from an:

(a) Insurer that is authorized by the Commissioner of Insurance to provide such insurance; or

(b) Employee benefit plan, as defined in 29 U.S.C. § 1002(3), that has been approved by the Board. The Board may approve an employee benefit plan unless the Board finds that the plan is not operated pursuant to such sound accounting and financial management practices as to ensure that the group will continue to receive adequate benefits.

2. Before entering into a contract with the insurer or approved employee benefit plan, the group shall submit the proposed contract to the Board for approval. The Board may approve the contract unless the departure of the group from the Program would cause an increase of more than 5 percent in the costs of premiums or contributions for the remaining participants in the Program. In determining whether to approve a proposed contract, the Board shall follow the criteria set forth in the regulations adopted by the Board pursuant to subsection ~~4~~ **5** and may consider the cumulative impact of groups that have left or are proposing to leave the Program. Except as otherwise provided in this section, the Board has discretion in determining whether to approve a contract. If the Board approves a proposed contract pursuant to this subsection, the group that submitted the proposed contract is not authorized to leave the Program until 120 days after the date on which the Board approves the proposed contract.

3. The Board shall not approve a proposed contract between an insurer or approved employee benefit plan and a group pursuant to subsection 2 unless:

(a) The group is organized for reasons other than acquiring insurance;

(b) The members of the group share job definitions, classifications or employers, or are otherwise members of a job-related group formed for reasons other than acquiring insurance;

(c) The group has legal authority to enter into contracts and bind its members, meets the requirements of state and federal law concerning nondiscrimination, and has the ability to purchase insurance; and

(d) The group includes all active state officers and employees who satisfy the requirements of paragraph (b) for inclusion in the



group and all retired state officers and employees who satisfied those requirements at the time of their retirement.

4. The Board shall disburse periodically to the insurer or employee benefit plan with which a group contracts pursuant to this section the total amount set forth in the contract for premiums or contributions for the members of the group for that period but not to exceed the amount appropriated to or authorized for the participating state agency that employs the members of the group for premiums or contributions for the members of the group for that period, after deducting any administrative costs related to the group.

~~[4.]~~ 5. The Board shall adopt regulations establishing the criteria pursuant to which the Board will approve proposed contracts pursuant to subsection 2.

Sec. 8. NRS 333.335 is hereby amended to read as follows:

333.335 1. Each proposal must be evaluated by:

(a) The chief of the using agency, or a committee appointed by the chief of the using agency in accordance with the regulations adopted pursuant to NRS 333.135, if the proposal is for a using agency; or

(b) The Chief of the Purchasing Division, or a committee appointed by the Chief in accordance with the regulations adopted pursuant to NRS 333.135, if the Chief is responsible for administering the proposal.

2. A committee appointed pursuant to subsection 1 must consist of not less than two members. A majority of the members of the committee must be state officers or employees. The committee may include persons who are not state officers or employees and possess expert knowledge or special expertise that the chief of the using agency or the Chief of the Purchasing Division determines is necessary to evaluate a proposal. The members of the committee are not entitled to compensation for their service on the committee, except that members of the committee who are state officers or employees are entitled to receive their salaries as state officers and employees. No member of the committee may have a financial interest in a proposal. *If the contract is being awarded for the Public Employees' Benefits Program, the Executive Officer of the Program may observe the activities of the committee, but may not vote or otherwise participate in the evaluation.*

3. In making an award, the chief of the using agency, the Chief of the Purchasing Division or each member of the committee, if a committee is established, shall consider and assign a score for each of the following factors for determining whether the proposal is in the best interests of the State of Nevada:

(a) The experience and financial stability of the person submitting the proposal;



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(b) Whether the proposal complies with the requirements of the request for proposals as prescribed in NRS 333.311;

(c) The price of the proposal; and

(d) Any other factor disclosed in the request for proposals.

4. The chief of the using agency, the Chief of the Purchasing Division or the committee, if a committee is established, shall determine the relative weight of each factor set forth in subsection 3 before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted.

5. ~~The~~ *Except as otherwise provided in this subsection, the chief of the using agency, the Chief of the Purchasing Division or the committee, if a committee is established, shall award the contract based on the best interests of the State, as determined by the total scores assigned pursuant to subsection 3, and is not required to accept the lowest-priced proposal. If the contract is being awarded for the Public Employees' Benefits Program, the Chief of the Purchasing Division or the committee, if a committee is established, shall submit recommendations for awarding the contract to the Board for the Public Employees' Benefits Program, which shall award the contract in accordance with section 1 of this act.*

6. Except as otherwise provided in NRS 239.0115, each proposal evaluated pursuant to the provisions of this section is confidential and may not be disclosed until the contract is awarded.

Sec. 9. This act becomes effective on July 1, 2011.

