SPONSOR: Sen. Townsend & Sen. Sokola & Sen. Lockman & Sen. Hocker & Sen. Pettyjohn & Rep. Longhurst & Rep. Schwartzkopf & Rep. Minor-Brown & Rep. Ramone & Rep. Yearick

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 29
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE STATE EMPLOYEE BENEFITS CONSOLIDATION ACT.

WHEREAS, promoting and protecting the health and wellness of Delaware's senior citizens is one of the highest priorities of the General Assembly; and

WHEREAS, State pensioners served the Delaware community for years and deserve quality healthcare through a sustainable State-funded plan; and

WHEREAS, over the past several years, the State Employee Benefits Committee (SEBC) and the Retirement Benefit Study Committee (RBSC) held many public meetings to study State retiree healthcare benefits and found that under the current state pensioner healthcare plans, vesting schedules, and funding models that the retiree benefit trust fund ("trust fund") is woefully underfunded and unsustainable; and

WHEREAS, specifically, the RBSC's analysis indicated a current shortfall of $10 billion and a projected shortfall of $37 billion in the trust fund by 2050 if the 2022 status quo continues; and

WHEREAS, the SEBC and RBSC analyses and public meetings indicated that a transition to a Delaware-specific Medicare Advantage plan, alongside higher contributions in the annual State budget to the trust fund and additional measures, would enable the State to continue to provide a strong package of healthcare benefits to State retirees on Medicare while also stabilizing the trust fund; and

WHEREAS, the SEBC, which has the legal responsibility to establish and oversee retiree healthcare, competitively bid the administration of the State Group Health Insurance Plans offered to State pensioners as the previous five-year Medicare Supplement contract prepared to expire on January 1, 2023; and

WHEREAS, after many public meetings, in early 2022, the SEBC received and awarded a bid by Highmark Blue Cross Blue Shield Delaware ("Highmark Delaware") to provide retiree healthcare under a Medicare Advantage plan, beginning January 1, 2023 (the "State Medicare Advantage Plan" or "Plan"); and

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WHEREAS, on June 28, 2022, the Governor signed the Fiscal Year 2023 state budget, which passed the General Assembly with overwhelming bipartisan support, included language that recategorized the State plan from Medicare Supplement to Medicare Advantage, and included one-time supplemental funding for the trust fund equal to one percent of the prior year's budget; and

WHEREAS, in the months after the Governor signed the FY23 budget, it became clear that many State pensioners were not aware of the SEBC and RBSC's public meetings and did not have an understanding of the forthcoming changes, and that some of the terms of the forthcoming changes themselves were still being negotiated; and

WHEREAS, after realizing that the impending transition in health plans was unexpected news to many State retirees, members of the General Assembly organized a series of public meetings throughout Delaware to solicit public input and to provide details and clarification about the State Medicare Advantage plan; and

WHEREAS, in response to legislators' and public input, the Governor's cabinet and staff negotiated for stronger transparency and accountability provisions of the contract with Highmark Delaware; and

WHEREAS, following a legal challenge to the transition to the Plan, on October 19, 2022, the Superior Court issued an opinion and order staying the implementation of the Plan; and

WHEREAS, it is in the interest of all Delawareans, including State retirees, that changes to State retiree healthcare benefits and ongoing annual funding for the trust fund are effective in stabilizing the trust fund while also continuing to provide strong, effective, and sustainable healthcare to State retirees; and

WHEREAS, following the October 19, 2022, opinion and order from the Superior Court, the retiree healthcare benefits under the previous Medicare Supplement plan have been extended until at least January 1, 2024, and there now is a need to consider the benefits and fiscal impact of any plan that will commence thereafter.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 96, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9601. Title.

This chapter shall be known as the "State Employee Benefits Consolidation Act."

§ 9602. State Employee Benefits Committee.

(a) There is hereby established a State Employee Benefits Committee ("Committee"). The Committee shall be comprised of the Lieutenant Governor, the Insurance Commissioner, the Chief Justice of the Supreme Court, the State Treasurer, the Director of the Office of Management and Budget, the Controller General, the Secretary of the Department

of Human ~~Resources~~ Resources, and the Secretary of Health and Social Services, or their ~~designees.~~ designees, and 1 State retiree, appointed by the Governor. In addition, ~~the Governor shall appoint 1~~ 2 Committee ~~member~~ members, 1 appointed by the President Pro Tempore of the Senate, and 1 appointed by the Speaker of the House of Representatives, shall be appointed from among the following ~~persons~~ organizational representatives: The President of the Delaware State Education Association or his or her designee, the Executive Director of the American Federation of State County and Municipal Employees or his or her designee, the President of the Correctional Officers Association of Delaware or his or her designee, ~~or~~ and the President of the Delaware State Troopers Association or his or her designee. ~~The appointment term shall be for 3 years.~~ Of the initial 2 organizational representatives appointed, 1 must be appointed for a 1-year term, and 1 must be appointed for a 2-year term. Thereafter, all members shall serve 2-year terms. Appointed members may not attend Committee meetings through a designee, but may attend subcommittee meetings through a designee, with the exception of the Retiree Healthcare Benefits Advisory Subcommittee. ~~An organizational representative appointed by the Governor, after serving a 3-year term, shall not serve another term until all the organizational representatives named in this subsection have served a 3-year term.~~ The Director of the Office of Management and Budget and the Secretary of Human Resources shall co-chair the Committee.

(b) The State Employee Benefits Committee shall have the following powers, duties and functions:

(1) With the exception of deferred compensation pursuant to Chapter 60A of this title, and any other investment or retirement savings plan, control and management of all employee benefit coverages including health-care insurance and blood bank, pursuant to Chapters 51 and 52 of this title; state employees group life insurance pursuant to Chapter 32 of Title 18; and all other currently existing and future employee benefits coverages, including but not limited to all forms of flexible benefits, dental, vision, prescription, long-term care and disability coverages.

(2) Selection of all carriers or third-party administrators necessary to provide coverages to State employees.

(3) Authority to contract on an insured or self insured basis.

(4) Authority to adopt rules and regulations for the general administration of the employee benefit coverages.

(5) Authority to make and enter into any and all contracts with any agency of the State, or any outside agency, for the purpose of assisting in the general administration of this section.

(c) All members of the Committee and all legal, actuarial and administrative personnel shall be entitled to

reimbursement for those travel and other expenses made necessary by their official duties that are approved by the Director of Statewide Benefits.

(d) The Committee shall hold regular meetings at least once every 6 months, which meetings shall be open to the public in accordance with § 10004 of this title.

~~§ 9604.~~ § 9603. Duties of the Secretary of Human Resources.

(a) The duties of the Secretary of Human Resources under this chapter shall include:

(1) The placement of all insurance with such carriers as the Committee deems appropriate.

(2) The operation of the self-insurance fund, when and if a self-insurance fund shall be established by the Committee for the operation of a self-insurance program.

(3) Centralized responsibility for the operation of the State employee benefits program vested in a single agency with an adequate staff of legal, actuarial and administrative personnel.

(4) The establishment and operation of an open bid procedure to be maintained for purchasing new employee benefits coverage from carriers and renewing existing contracts with such carriers which will permit the free forces of market competition to operate to the benefit of the state employee benefits coverage programs.

(5) The maintenance in a safe and secure place of all policies with commercial insurers and all records necessary and pertinent thereto.

(6) The maintenance in a safe and secure place of all records, accounts, claims files, statistical studies and other such records and documents necessary and proper in the administration of any self-insured program, when and if the Committee deems it necessary and proper to utilize same.

(7) Prompt notification to insurance carriers or third party administrators of the names and other necessary data related to the employees and pensioners covered by State employee benefits programs and of all changes and additions thereto, and payment of such obligations as are incurred pursuant to this section, including the cost of premium or subscription charges for insurance coverage upon the written request of any State employee or pensioner from the funds appropriated therefore and, in the event such appropriated funds are inadequate, pay such additional sums as may be required from those moneys in the General Fund not otherwise appropriated.

(8) Communication to State employees of all State employee benefits coverages and any additions or changes of benefits affecting State employees.

(9) Authority to act as agent of the State to enter into a contract or contracts with the carrier or carriers for benefits programs for State employees and pensioners.

(10) Prompt notification of the health-care insurance carrier or third party administrator of the names and other necessary data related to the employees and pensioners covered by the State employees' health insurance program and of all changes and shall pay such obligations as are incurred pursuant to this section, including the cost of premium or subscription charges for health-care insurance coverage upon the written request of any state employee or pensioner from the funds appropriated therefore and, in the event such appropriated funds are inadequate, pay such addition sums as may be required from those moneys in the General Fund not otherwise appropriated.

(b) The Controller General's Office must provide comprehensive biannual public reports on the work of the Committee to the General Assembly by May 30 and November 30 of each year.

§ 9604. Retiree Healthcare Benefits Advisory Subcommittee.

(a) There is hereby established a Retiree Healthcare Benefits Advisory Subcommittee ("Subcommittee"). The Subcommittee shall be comprised of the Lieutenant Governor, the Insurance Commissioner, the Director of the Office of Management and Budget, the Secretary of Finance, the Secretary of the Department of Human Resources, 1 member of each caucus of the Delaware House of Representatives appointed by the Speaker of the House, and 1 member of each caucus of the Delaware State Senate appointed by the President Pro Tempore. In addition, the Governor shall appoint 1 retired state employee from each County and 1 representative of a union of state employees, the Speaker of the House shall appoint 1 representative of a union of state employees, and the President Pro Tempore of the Senate shall appoint 1 representative of a union of state employees. The Lieutenant Governor shall serve as Chair, and the members of the majority caucus from the House of Representatives and the Senate shall serve as Co-Vice Chairs of the Subcommittee. Appointed members may not attend Subcommittee meetings through a designee. The Delaware Department of Justice shall provide legal support and the Department of Human Resources shall provide administrative support to the Subcommittee. Additional support shall be provided by the State Office of Pensions and Department of Finance as may be requested by the Chairs.

(b) The General Assembly recognizes the importance and urgency of addressing State retiree healthcare benefits. Thus, the Subcommittee shall have the following powers, duties and functions:

(1) Conduct public meetings and receive public comment about current and future State retiree healthcare benefits, including the previously proposed Medicare Advantage Plan for State retirees, while taking into consideration the previous work of the State Employee Benefits Committee and the Retirement Benefit Study Committee.

(2) In the course of its work, consider how reporting and analyses regarding Medicare Advantage Plans nationwide relate to the terms of the previously proposed Medicare Advantage Plan for State retirees;

(3) Study, review, and evaluate the fiscal and other implications of the extension of the existing Medicare Supplement plan to January 1, 2024.

(4) Evaluate options for continuing to provide strong State retiree healthcare benefits in a fiscally sustainable way, including options to maintain their current coverage similar to residents in other states that offer a choice to buy into a Medicare Supplement plan.

(5) By May 1, 2023, issue findings and recommendations to the Governor and the General Assembly about the foregoing as they relate to the Fiscal Year 2024 State budget.