



Senate

General Assembly

February Session, 2004

File No. 129

Senate Bill No. 485

Senate, March 17, 2004

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT ESTABLISHING FLEXIBLE HEALTH CARE SPENDING ACCOUNTS FOR STATE EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2004*) The Comptroller shall
2 maintain a flexible health care spending account program for state
3 employees in accordance with Sections 105 and 125 of the Internal
4 Revenue Code of 1986, or any subsequent corresponding internal
5 revenue code of the United States, as from time to time amended, and
6 regulations adopted pursuant to Sections 105 and 125 of said Internal
7 Revenue Code. Under the program, the Comptroller or the program
8 administrator, upon receipt of the written request of an employee,
9 shall establish and maintain a flexible health care spending account for
10 such employee. The Comptroller shall reduce the salary of such
11 employee by the amount designated in such request. Such amount
12 shall be transferred to the employee's flexible health care spending
13 account and shall be used to reimburse the employee for expenses
14 incurred for medical care which are eligible for reimbursement under

15 Section 213 of said Internal Revenue Code. The Comptroller may
 16 contract with a program administrator for the management of the
 17 program. For the purposes of this section, "state employees" includes
 18 members of the General Assembly.

19 Sec. 2. (NEW) (*Effective July 1, 2004*) All funds deposited pursuant
 20 to the flexible health care spending account program established in
 21 section 1 of this act shall be held by the Comptroller or by a program
 22 administrator as agent for the participating employer. Such funds shall
 23 be separately accounted for and shall remain the property of the
 24 employer. The funds shall be maintained in accordance with Section
 25 125 of the Internal Revenue Code of 1986, or any subsequent
 26 corresponding internal revenue code of the United States, as from time
 27 to time amended, and such funds shall be used to reimburse the
 28 employee for expenses incurred for medical care which are eligible for
 29 reimbursement under Section 213 of said Internal Revenue Code. The
 30 funds deposited pursuant to the program shall be exempt from the
 31 provisions of chapter 66 of the general statutes concerning additional
 32 employee contributions under the tier I retirement plan and additional
 33 hazardous duty employee contributions.

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| This act shall take effect as follows: | |
| Section 1 | <i>July 1, 2004</i> |
| Sec. 2 | <i>July 1, 2004</i> |

INS *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 05 \$ | FY 06 \$ |
|-------------------------------------|--------------------|-----------------|-----------------|
| State Comptroller - Fringe Benefits | Various - Savings | Indeterminate | Indeterminate |
| Revenue Serv., Dept. | GF - Revenue Loss | Indeterminate | Indeterminate |

Note: GF=General Fund

Municipal Impact: None

Explanation

The use of flexible health care spending accounts by state employees would result in savings and a revenue loss to the state. The state, as an employer, would not pay the social security portion (6.2%) of the FICA tax. Additionally, no income tax would be paid on the funds set aside on a pre-tax basis. For every \$1,000 an employee sets aside on a pre-tax basis, the state would save \$62 in the Employers Social Security account (administered by the State Comptroller) and would experience a General Fund income tax revenue loss of approximately \$50. This results in a net state savings of \$12 for every \$1,000 set aside by the state employee.

The number of state employees who would avail themselves of this new benefit is not known at this time.

OLR Bill Analysis

SB 485

AN ACT ESTABLISHING FLEXIBLE HEALTH CARE SPENDING ACCOUNTS FOR STATE EMPLOYEES**SUMMARY:**

Beginning July 1, 2004, this bill requires the comptroller to maintain a flexible health care spending account program for state employees and legislators in accordance with federal Internal Revenue Code (IRC) rules. Upon an employee's written request, the comptroller or program administrator must establish a flexible spending account for the employee. The employee's salary is reduced by the amount specified in the request. That amount must be transferred to the employee's account and used to reimburse medical care expenses not covered by health insurance. The bill authorizes the comptroller to contract with a program administrator.

The bill requires the comptroller or program administrator to hold flexible health care spending account funds, which must (1) be separately accounted for, (2) remain the employer's property, (3) be maintained in accordance with IRC § 125, and (4) be used to reimburse employee medical care expenses as permitted by IRC § 213. For Tier 1 and hazardous duty employees, retirement plan contributions will be based on salary less the amount deposited into a flexible health care spending account.

EFFECTIVE DATE: July 1, 2004

Collective Bargaining Agreements

The bill would not preempt any collective bargaining agreement currently in effect. By law, when the statutes conflict with existing state employee collective bargaining agreement provisions governing benefits and health insurance, the agreement prevails. The bill's provisions would have to be taken into account in agreements negotiated after the bill becomes effective.

BACKGROUND

Flexible Health Care Spending Accounts

Federal IRC authorizes flexible spending accounts (FSAs) for health care expense reimbursement. IRC allows employers to offer employees a choice between cash (salary) and certain “qualified” nontaxable benefits. It also allows employees to make contributions for such benefits by salary reduction. Contributions must be used in the year in which they are made. This is the “use-it-or-lose-it” rule whereby benefits must be used within the plan year. Unused amounts are forfeited at the end of the plan year. A qualified benefit is one that does not defer compensation and is excluded from an employee’s gross income, such as FSAs, among others. As a result, the employer’s federal and state tax liability decreases. To avoid a constructive receipt of income, which makes the account funds taxable, the plan must offer employees an election opportunity, and participants must elect the amounts of FSA contribution before the beginning of the plan year (IRC § 125 and § 105).

FSA funds can be used to reimburse specified, incurred expenses. A health care FSA reimburses medical expenses incurred by the employee or his dependents during the plan year (i.e., based on date of service) that are not covered by health insurance. Reimbursement is permitted for medical care, which means amounts paid for the diagnosis, treatment, or prevention of disease or affecting the structure or function of the body; essential medical care transportation; medical insurance premiums; certain long-term care premiums and services; certain lodging away from home due to essential medical care provided by a physician in a licensed hospital; prescription drugs; physician expenses; and cosmetic surgery necessary to correct a deformity caused by a congenital abnormality, accidental injury, or disfiguring disease (IRC § 213).

Tier 2 and Tier 2A Retirement Plans

The comptroller would administer the health care FSA program for all state employees, including Tier 2 and Tier 2A. Employees in Tier 2 do not make retirement plan contributions. Employees in tier 2A do, but the provisions regarding the contributions are contained in contracts, not the statutes. For any Tier 2A employee that elects a salary reduction for the purpose of establishing a health care FSA, retirement plan contributions will be based on salary less the amount deposited into the FSA.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Report
Yea 16 Nay 1