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**ENGROSSED SUBSTITUTE SENATE BILL 5905**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Hill and Hargrove)

READ FIRST TIME 04/15/13.

1        AN ACT Relating to modifying employee eligibility for health  
2 insurance benefits consistent with the employer shared responsibility  
3 provisions of the patient protection and affordable care act; amending  
4 RCW 41.05.065; adding a new section to chapter 28A.400 RCW; adding a  
5 new section to chapter 41.05 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7        NEW SECTION.    **Sec. 1.** (1) The legislature finds that:

8        (a) Each biennium, nearly two billion dollars in public funds are  
9 spent on the purchase of employee insurance benefits for more than two  
10 hundred thousand public school employees and their dependents and, of  
11 that amount, almost one-half billion dollars is for insurance benefits  
12 for classified employees, the majority of which are part-time  
13 employees;

14        (b) Each biennium, more than two billion dollars in state revenues  
15 are spent on the purchase of employee insurance benefits for more than  
16 two hundred twenty-five thousand state agency and higher education  
17 employees and their dependents covered by plans offered by the public  
18 employees' benefits board;

1 (c) Beginning January 1, 2014, the federal affordable care act will  
2 create a new marketplace for health insurance in Washington state that  
3 includes:

4 (i) A health benefit exchange to enable consumers to compare  
5 qualified health insurance options to find the plan that best meets  
6 their needs and budget;

7 (ii) A requirement that plans offered on the exchange include  
8 coverage for all essential health benefits;

9 (iii) Federal tax credits to make health insurance premiums more  
10 affordable for individuals whose income is below four hundred percent  
11 of the federal poverty level and who do not have access to an employer-  
12 provided health plan;

13 (iv) Federal subsidies to reduce out-of-pocket medical expenses for  
14 persons with incomes below two hundred fifty percent of the federal  
15 poverty level and who do not have access to an employer-provided health  
16 plan; and

17 (v) A requirement that employers with more than fifty full-time  
18 employees offer a health benefit plan to all their full-time employees  
19 or pay a shared-responsibility penalty;

20 (d) The implementation of the Washington health benefit exchange,  
21 premium tax credits, and out-of-pocket subsidies in 2014 presents a new  
22 opportunity for school districts and the state to provide increased  
23 access to affordable health insurance coverage for part-time employees,  
24 especially for the lowest-paid employees and those seeking full family  
25 insurance coverage, in a more cost-effective manner.

26 (2) The legislature establishes the following goals:

27 (a) For school districts and the state to take advantage of the  
28 federal affordable care act, including the Washington health benefit  
29 exchange, premium tax credits, and subsidies to make more affordable  
30 health benefit plans available to part-time school district and state  
31 employees;

32 (b) Provide more affordable options for full family health benefits  
33 coverage for low-income part-time employees;

34 (c) Dedicate a portion of the savings resulting from part-time  
35 employees obtaining coverage and tax credits through the exchange as a  
36 source of funding for school districts and the state to reimburse  
37 premium or out-of-pocket costs, or for compensation increases, for  
38 those employees;

1 (d) Redirect a portion of the savings from reduced state spending  
2 for school district, state agency, and higher education part-time  
3 employees' health benefits to other public school needs.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.400  
5 RCW to read as follows:

6 (1) Beginning with the 2013-14 school year, school districts must  
7 identify opportunities for using the plans, premium credits, and  
8 subsidies available through the Washington health benefit exchange to  
9 provide affordable health insurance benefits qualifying for part-time  
10 employees.

11 (2) School districts must fully comply with the affordable care  
12 act's employer shared responsibility provisions that require affordable  
13 health benefit plan coverage be offered to all full-time employees, as  
14 defined by federal regulations.

15 (3) From funding provided in the omnibus appropriations act, and  
16 other funding sources, school districts must establish compensation  
17 arrangements to reimburse a portion of the premium or out-of-pocket  
18 costs of part-time employees who obtain health insurance coverage  
19 through the Washington health benefit exchange. Such compensation may  
20 be provided in the amount and in the form the school district  
21 determines will best promote the goals stated in section 1 of this act.  
22 Any compensation provided under this section shall be considered a part  
23 of basic benefits.

24 **Sec. 3.** RCW 41.05.065 and 2011 1st sp.s. c 8 s 1 are each amended  
25 to read as follows:

26 (1) The board shall study all matters connected with the provision  
27 of health care coverage, life insurance, liability insurance,  
28 accidental death and dismemberment insurance, and disability income  
29 insurance or any of, or a combination of, the enumerated types of  
30 insurance for employees and their dependents on the best basis possible  
31 with relation both to the welfare of the employees and to the state.  
32 However, liability insurance shall not be made available to dependents.

33 (2) The board shall develop employee benefit plans that include  
34 comprehensive health care benefits for employees. In developing these  
35 plans, the board shall consider the following elements:

1 (a) Methods of maximizing cost containment while ensuring access to  
2 quality health care;

3 (b) Development of provider arrangements that encourage cost  
4 containment and ensure access to quality care, including but not  
5 limited to prepaid delivery systems and prospective payment methods;

6 (c) Wellness incentives that focus on proven strategies, such as  
7 smoking cessation, injury and accident prevention, reduction of alcohol  
8 misuse, appropriate weight reduction, exercise, automobile and  
9 motorcycle safety, blood cholesterol reduction, and nutrition  
10 education;

11 (d) Utilization review procedures including, but not limited to a  
12 cost-efficient method for prior authorization of services, hospital  
13 inpatient length of stay review, requirements for use of outpatient  
14 surgeries and second opinions for surgeries, review of invoices or  
15 claims submitted by service providers, and performance audit of  
16 providers;

17 (e) Effective coordination of benefits; and

18 (f) Minimum standards for insuring entities.

19 (3) To maintain the comprehensive nature of employee health care  
20 benefits, benefits provided to employees shall be substantially  
21 equivalent to the state employees' health benefits plan in effect on  
22 January 1, 1993. Nothing in this subsection shall prohibit changes or  
23 increases in employee point-of-service payments or employee premium  
24 payments for benefits or the administration of a high deductible health  
25 plan in conjunction with a health savings account. ((The board may  
26 establish employee eligibility criteria which are not substantially  
27 equivalent to employee eligibility criteria in effect on January 1,  
28 1993.))

29 (4) The eligibility provisions of this subsection have effect  
30 through December 31, 2013. Except if bargained for under chapter 41.80  
31 RCW, the board shall design benefits and determine the terms and  
32 conditions of employee and retired employee participation and coverage,  
33 including establishment of eligibility criteria subject to the  
34 requirements of this chapter. Employer groups obtaining benefits  
35 through contractual agreement with the authority for employees defined  
36 in RCW 41.05.011(6) (a) through (d) may contractually agree with the  
37 authority to benefits eligibility criteria which differs from that

1 determined by the board. The eligibility criteria established by the  
2 board shall be no more restrictive than the following:

3 (a) Except as provided in (b) through (e) of this subsection, an  
4 employee is eligible for benefits from the date of employment if the  
5 employing agency anticipates he or she will work an average of at least  
6 eighty hours per month and for at least eight hours in each month for  
7 more than six consecutive months. An employee determined ineligible  
8 for benefits at the beginning of his or her employment shall become  
9 eligible in the following circumstances:

10 (i) An employee who works an average of at least eighty hours per  
11 month and for at least eight hours in each month and whose anticipated  
12 duration of employment is revised from less than or equal to six  
13 consecutive months to more than six consecutive months becomes eligible  
14 when the revision is made.

15 (ii) An employee who works an average of at least eighty hours per  
16 month over a period of six consecutive months and for at least eight  
17 hours in each of those six consecutive months becomes eligible at the  
18 first of the month following the six-month averaging period.

19 (b) A seasonal employee is eligible for benefits from the date of  
20 employment if the employing agency anticipates that he or she will work  
21 an average of at least eighty hours per month and for at least eight  
22 hours in each month of the season. A seasonal employee determined  
23 ineligible at the beginning of his or her employment who works an  
24 average of at least half-time, as defined by the board, per month over  
25 a period of six consecutive months and at least eight hours in each of  
26 those six consecutive months becomes eligible at the first of the month  
27 following the six-month averaging period. A benefits-eligible seasonal  
28 employee who works a season of less than nine months shall not be  
29 eligible for the employer contribution during the off season, but may  
30 continue enrollment in benefits during the off season by self-paying  
31 for the benefits. A benefits-eligible seasonal employee who works a  
32 season of nine months or more is eligible for the employer contribution  
33 through the off season following each season worked.

34 (c) Faculty are eligible as follows:

35 (i) Faculty who the employing agency anticipates will work  
36 half-time or more for the entire instructional year or equivalent nine-  
37 month period are eligible for benefits from the date of employment.  
38 Eligibility shall continue until the beginning of the first full month

1 of the next instructional year, unless the employment relationship is  
2 terminated, in which case eligibility shall cease the first month  
3 following the notice of termination or the effective date of the  
4 termination, whichever is later.

5 (ii) Faculty who the employing agency anticipates will not work for  
6 the entire instructional year or equivalent nine-month period are  
7 eligible for benefits at the beginning of the second consecutive  
8 quarter or semester of employment in which he or she is anticipated to  
9 work, or has actually worked, half-time or more. Such an employee  
10 shall continue to receive uninterrupted employer contributions for  
11 benefits if the employee works at least half-time in a quarter or  
12 semester. Faculty who the employing agency anticipates will not work  
13 for the entire instructional year or equivalent nine-month period, but  
14 who actually work half-time or more throughout the entire instructional  
15 year, are eligible for summer or off-quarter coverage. Faculty who  
16 have met the criteria of this subsection (4)(c)(ii), who work at least  
17 two quarters of the academic year with an average academic year  
18 workload of half-time or more for three quarters of the academic year,  
19 and who have worked an average of half-time or more in each of the two  
20 preceding academic years shall continue to receive uninterrupted  
21 employer contributions for benefits if he or she works at least half-  
22 time in a quarter or semester or works two quarters of the academic  
23 year with an average academic workload each academic year of half-time  
24 or more for three quarters. Eligibility under this section ceases  
25 immediately if this criteria is not met.

26 (iii) Faculty may establish or maintain eligibility for benefits by  
27 working for more than one institution of higher education. When  
28 faculty work for more than one institution of higher education, those  
29 institutions shall prorate the employer contribution costs, or if  
30 eligibility is reached through one institution, that institution will  
31 pay the full employer contribution. Faculty working for more than one  
32 institution must alert his or her employers to his or her potential  
33 eligibility in order to establish eligibility.

34 (iv) The employing agency must provide written notice to faculty  
35 who are potentially eligible for benefits under this subsection (4)(c)  
36 of their potential eligibility.

37 (v) To be eligible for maintenance of benefits through averaging

1 under (c)(ii) of this subsection, faculty must provide written  
2 notification to his or her employing agency or agencies of his or her  
3 potential eligibility.

4 (d) A legislator is eligible for benefits on the date his or her  
5 term begins. All other elected and full-time appointed officials of  
6 the legislative and executive branches of state government are eligible  
7 for benefits on the date his or her term begins or they take the oath  
8 of office, whichever occurs first.

9 (e) A justice of the supreme court and judges of the court of  
10 appeals and the superior courts become eligible for benefits on the  
11 date he or she takes the oath of office.

12 (f) Except as provided in (c)(i) and (ii) of this subsection,  
13 eligibility ceases for any employee the first of the month following  
14 termination of the employment relationship.

15 (g) In determining eligibility under this section, the employing  
16 agency may disregard training hours, standby hours, or temporary  
17 changes in work hours as determined by the authority under this  
18 section.

19 (h) Insurance coverage for all eligible employees begins on the  
20 first day of the month following the date when eligibility for benefits  
21 is established. If the date eligibility is established is the first  
22 working day of a month, insurance coverage begins on that date.

23 (i) Eligibility for an employee whose work circumstances are  
24 described by more than one of the eligibility categories in (a) through  
25 (e) of this subsection shall be determined solely by the criteria of  
26 the category that most closely describes the employee's work  
27 circumstances.

28 (j) Except for an employee eligible for benefits under (b) or  
29 (c)(ii) of this subsection, an employee who has established eligibility  
30 for benefits under this section shall remain eligible for benefits each  
31 month in which he or she is in pay status for eight or more hours, if  
32 (i) he or she remains in a benefits-eligible position and (ii) leave  
33 from the benefits-eligible position is approved by the employing  
34 agency. A benefits-eligible seasonal employee is eligible for the  
35 employer contribution in any month of his or her season in which he or  
36 she is in pay status eight or more hours during that month.  
37 Eligibility ends if these conditions are not met, the employment

1 relationship is terminated, or the employee voluntarily transfers to a  
2 noneligible position.

3 (k) For the purposes of this subsection:

4 (i) "Academic year" means summer, fall, winter, and spring quarters  
5 or semesters;

6 (ii) "Half-time" means one-half of the full-time academic workload  
7 as determined by each institution, except that half-time for community  
8 and technical college faculty employees shall have the same meaning as  
9 "part-time" under RCW 28B.50.489;

10 (iii) "Benefits-eligible position" shall be defined by the board.

11 (5) Beginning January 1, 2014, eligibility for health care benefits  
12 is as provided under this subsection. Except if bargained for under  
13 chapter 41.80 RCW, the board must design benefits and determine the  
14 terms and conditions of employee and retired employee participation and  
15 coverage. The terms and conditions must be consistent with the  
16 provisions of this subsection. Employer groups obtaining benefits  
17 through contractual agreement with the authority for employees defined  
18 in RCW 41.05.011(6) (a), (b), (c), and (d) may contractually agree with  
19 the authority to benefits eligibility criteria which differs from the  
20 criteria contained in this section. The eligibility criteria for  
21 health care benefits is:

22 (a) Each employee who is a full-time employee as defined by section  
23 1513 of the patient protection and affordable care act and related  
24 regulations, as administered by the authority, is eligible for  
25 benefits. Except if bargained for pursuant to (a)(i) of this  
26 subsection, or if authorized by the office of financial management  
27 pursuant to (a)(ii) of this subsection, employees who are not full-time  
28 employees as defined by section 1513 of the patient protection and  
29 affordable care act and related regulations, as administered by the  
30 authority, are not eligible for benefits.

31 (i) The employer and exclusive bargaining representative, pursuant  
32 to chapter 41.80 RCW, may bargain part-time employee eligibility  
33 criteria that does not exceed the criteria under subsection (4) of this  
34 section.

35 (ii) The office of financial management may approve part-time  
36 employee eligibility criteria that does not exceed the criteria under  
37 subsection (4) of this section for part-time state positions not  
38 covered under any collective bargaining agreement.



1 (b) A legislator is eligible for benefits on the date his or her  
2 term begins. All other elected and full-time appointed officials of  
3 the legislative and executive branches of state government are eligible  
4 for benefits on the date their term begins or they take the oath of  
5 office, whichever occurs first.

6 (c) Justices of the supreme court and judges of the court of  
7 appeals and the superior courts become eligible for benefits on the  
8 date they take the oath of office.

9 (d) Except as provided by section 1513 of the patient protection  
10 and affordable care act and related regulations, as administered by the  
11 authority, eligibility ceases for any employee the first day of the  
12 month following termination of the employment relationship.

13 (e) Insurance coverage for all eligible employees begins on the  
14 first day of the month following the date when eligibility for benefits  
15 is established. If the date eligibility is established is the first  
16 working day of a month, insurance coverage begins on that date.

17 (f) From funding provided in the omnibus appropriations act, the  
18 authority must establish and administer a compensation arrangement to  
19 reimburse a portion of the premium or out-of-pocket costs of part-time  
20 state agency and higher education institution employees who obtain  
21 health insurance coverage through the Washington health benefit  
22 exchange. Only persons who are expected to be employed for at least  
23 eighty hours per month for at least six consecutive months are eligible  
24 for the exchange premium reimbursement benefit provided under this  
25 section, and only for months in which they work at least eighty hours.  
26 The exchange premium reimbursement benefit may not exceed two dollars  
27 per hour for the number of hours worked by the part-time employee in a  
28 month, and in no case may exceed two hundred sixty dollars per month.  
29 Reimbursement may only be provided for coverage of the employee and the  
30 employee's spouse and dependent children. The authority may adopt  
31 rules that are consistent with the goals in section 1 of this act to  
32 implement the benefit.

33 (6) The board may authorize premium contributions for an employee  
34 and the employee's dependents in a manner that encourages the use of  
35 cost-efficient managed health care systems.

36 ~~((+6))~~ (7)(a) For any open enrollment period following August 24,  
37 2011, the board shall offer a health savings account option for  
38 employees that conforms to section 223, Part VII of subchapter B of

1 chapter 1 of the internal revenue code of 1986. The board shall comply  
2 with all applicable federal standards related to the establishment of  
3 health savings accounts.

4 (b) By November 30, 2015, and each year thereafter, the authority  
5 shall submit a report to the relevant legislative policy and fiscal  
6 committees that includes the following:

7 (i) Public employees' benefits board health plan cost and service  
8 utilization trends for the previous three years, in total and for each  
9 health plan offered to employees;

10 (ii) For each health plan offered to employees, the number and  
11 percentage of employees and dependents enrolled in the plan, and the  
12 age and gender demographics of enrollees in each plan;

13 (iii) Any impact of enrollment in alternatives to the most  
14 comprehensive plan, including the high deductible health plan with a  
15 health savings account, upon the cost of health benefits for those  
16 employees who have chosen to remain enrolled in the most comprehensive  
17 plan.

18 ~~((7))~~ (8) Notwithstanding any other provision of this chapter,  
19 for any open enrollment period following August 24, 2011, the board  
20 shall offer a high deductible health plan in conjunction with a health  
21 savings account developed under subsection ~~((6))~~ (7) of this section.

22 ~~((8))~~ (9) Employees shall choose participation in one of the  
23 health care benefit plans developed by the board and may be permitted  
24 to waive coverage under terms and conditions established by the board.

25 ~~((9))~~ (10) The board shall review plans proposed by insuring  
26 entities that desire to offer property insurance and/or accident and  
27 casualty insurance to state employees through payroll deduction. The  
28 board may approve any such plan for payroll deduction by insuring  
29 entities holding a valid certificate of authority in the state of  
30 Washington and which the board determines to be in the best interests  
31 of employees and the state. The board shall adopt rules setting forth  
32 criteria by which it shall evaluate the plans.

33 ~~((10))~~ (11) Before January 1, 1998, the public employees'  
34 benefits board shall make available one or more fully insured long-term  
35 care insurance plans that comply with the requirements of chapter 48.84  
36 RCW. Such programs shall be made available to eligible employees,  
37 retired employees, and retired school employees as well as eligible  
38 dependents which, for the purpose of this section, includes the parents

1 of the employee or retiree and the parents of the spouse of the  
2 employee or retiree. Employees of local governments, political  
3 subdivisions, and tribal governments not otherwise enrolled in the  
4 public employees' benefits board sponsored medical programs may enroll  
5 under terms and conditions established by the administrator, if it does  
6 not jeopardize the financial viability of the public employees'  
7 benefits board's long-term care offering.

8 (a) Participation of eligible employees or retired employees and  
9 retired school employees in any long-term care insurance plan made  
10 available by the public employees' benefits board is voluntary and  
11 shall not be subject to binding arbitration under chapter 41.56 RCW.  
12 Participation is subject to reasonable underwriting guidelines and  
13 eligibility rules established by the public employees' benefits board  
14 and the health care authority.

15 (b) The employee, retired employee, and retired school employee are  
16 solely responsible for the payment of the premium rates developed by  
17 the health care authority. The health care authority is authorized to  
18 charge a reasonable administrative fee in addition to the premium  
19 charged by the long-term care insurer, which shall include the health  
20 care authority's cost of administration, marketing, and consumer  
21 education materials prepared by the health care authority and the  
22 office of the insurance commissioner.

23 (c) To the extent administratively possible, the state shall  
24 establish an automatic payroll or pension deduction system for the  
25 payment of the long-term care insurance premiums.

26 (d) The public employees' benefits board and the health care  
27 authority shall establish a technical advisory committee to provide  
28 advice in the development of the benefit design and establishment of  
29 underwriting guidelines and eligibility rules. The committee shall  
30 also advise the board and authority on effective and cost-effective  
31 ways to market and distribute the long-term care product. The  
32 technical advisory committee shall be comprised, at a minimum, of  
33 representatives of the office of the insurance commissioner, providers  
34 of long-term care services, licensed insurance agents with expertise in  
35 long-term care insurance, employees, retired employees, retired school  
36 employees, and other interested parties determined to be appropriate by  
37 the board.

1 (e) The health care authority shall offer employees, retired  
2 employees, and retired school employees the option of purchasing long-  
3 term care insurance through licensed agents or brokers appointed by the  
4 long-term care insurer. The authority, in consultation with the public  
5 employees' benefits board, shall establish marketing procedures and may  
6 consider all premium components as a part of the contract negotiations  
7 with the long-term care insurer.

8 (f) In developing the long-term care insurance benefit designs, the  
9 public employees' benefits board shall include an alternative plan of  
10 care benefit, including adult day services, as approved by the office  
11 of the insurance commissioner.

12 (g) The health care authority, with the cooperation of the office  
13 of the insurance commissioner, shall develop a consumer education  
14 program for the eligible employees, retired employees, and retired  
15 school employees designed to provide education on the potential need  
16 for long-term care, methods of financing long-term care, and the  
17 availability of long-term care insurance products including the  
18 products offered by the board.

19 ~~((11))~~ (12) The board may establish penalties to be imposed by  
20 the authority when the eligibility determinations of an employing  
21 agency fail to comply with the criteria under ~~((this chapter))~~ section  
22 1513 of the patient protection and affordable care act and related  
23 regulations, as administered by the authority.

24 NEW SECTION. Sec. 4. A new section is added to chapter 41.05 RCW  
25 to read as follows:

26 For the period from July 1, 2013, through June 30, 2015, the  
27 authority shall develop and implement an outreach and education program  
28 to inform part-time state and school district employees of the health  
29 insurance plans, premium tax credits, and out-of-pocket cost subsidies  
30 available to individuals who purchase health plans offered through the  
31 Washington health benefit exchange. The outreach and education program  
32 shall be developed in collaboration with school districts, the office  
33 of the superintendent of public instruction, labor organizations, the  
34 Washington health benefit exchange, and other appropriate entities.

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