MPFFU OVERVIEW OF THE PUBLICLY FUNDED HEALTH INSURANCE CONTRIBUTION ACT (SENATE BILL7)

This analysis of Senate Bill 7 was prepared by Michael L. O'Hearon as an informational resource for the members of the Michigan Professional Fire Fighters Union. You are encouraged to consult with your own Local's attorney for guidance concerning bargaining strategy and/or the impact of this legislation on your particular bargaining unit.

The purpose of this legislation is to limit the amount that any public employer may pay for its employees' health insurance benefits during any given benefit year.

DEFINITIONS

In Section 2 of the bill various terms are defined and control who is and is not affected by this legislation. For all intents and purposes, every MPFFU Local (except Local I-35) and its members are subject to the terms and provisions of this legislation, including Locals representing members employed by cities, counties, townships, villages, and fire authorities.

"HARD CAP" PROVISION

Section 3 of the bill establishes specific dollar amounts which public employers are prohibited from exceeding in their annual spending for employee health care. Included in these spending limits are any amounts paid by the public employer to reimburse co-pays or deductibles or paid into health savings accounts or flexible spending accounts used to cover health care costs. The limitations for the benefit year beginning January 1, 2012 are as follows:

Single person coverage- $5,500
Individual and spouse coverage- $11,000
Family coverage- $15,000

The legislation provides a formula for the public employer to calculate its total maximum contribution to employee health care during the benefit year. Quite simply, the formula is to multiply the number of employees in each category listed above by the corresponding dollar amount for that category and add the three totals to reach the employer's total maximum contribution. Each year by October 1 the state treasurer will revise the hard cap dollar amount based on the CPI (consumer price index) from the previous year.

80/20 PROVISION

The fourth section of the bill provides an alternative formula for determining the public employer's maximum contribution to employee health care. This provision caps the employer's contribution at 80% of the total expenditure for employee health care benefits. Total expenditures for employee health care benefits include employer contributions for premiums, illustrative rates, reimbursement of co-pays and deductibles, and payments into health savings accounts and flexible spending accounts used to cover health care costs; but, DO NOT INCLUDE co-pays, coinsurance, deductibles, service fees, or other out-of-pocket expenses incurred by the employees.

In order to utilize the 80/20 plan, the public employer must elect to do so by a majority vote of its governing body. (ie: the city council; the township board; the authority board)

CURRENT COLLECTIVE BARGAINING AGREEMENTS

If your Local currently has an unexpired collective bargaining agreement with your employer, it will not

be subject to the terms of this legislation until the collective bargaining agreement expires. In such cases, the amount the public employer spends on employee health care for your bargaining unit is excluded from the employer's total expenditure calculation under the 80/20 plan during the term of the collective bargaining agreement for your bargaining unit. (Meaning, the employer does not get to allocate its expenditures for your health care plan to its other employees.)

Section 5(2) of the bill prohibits the execution of a new collective bargaining agreement with terms that are inconsistent with either the hard cap provision or the 80/20 provision on or after September 15, 2011. There is much speculation about what this provision means. It seems to be being interpreted to mean that any new collective bargaining agreement settled before that date will not be subject to the provisions of the new law. However, the Section 5(1) exemption clearly indicates that your collective bargaining agreement must be in effect on the effective date of the act (the day the governor signs the law). In strict legal terms, that means that your collective bargaining agreement has been ratified by both parties regardless of whether a new, integrated, collective bargaining agreement has been executed by the parties. The introduction of the September 15 date clearly anticipates a "window" of opportunity; but, it is unclear what opportunity the window provides. The Public Employment Relations Act (PERA) requires good faith bargaining between a public employer and its represented employees. As such, there is no reason to believe that any tentative agreement reached before September 15, 2011 would be subject to the provisions of this new law if both parties agreed to exempt it.

PAYROLL DEDUCTIONS

The provisions of the legislation authorize the public employer to deduct the employee's share of the cost of employee health care from the employee's paycheck and to condition eligibility for those benefits upon the employee's authorizing the employer to make the deduction.

COURT CHALLENGES

The legislation provides that if a court strikes down as invalid either the hard cap provision or the 80/20 provision, then the provision that the court did not strike down shall apply.

OPT OUT PROVISION

The public employer may choose to opt out of the requirements of this legislation entirely by a two thirds (2/3) vote of its governing body. The governing body must vote to opt out of the requirements of the new law every year. In a city where the mayor is also the chief administrator (ie: no city manager or city administrator), the mayor must approve the city council's decision to opt out. Likewise, in a county where the county executive is also the chief administrator of the county, the county executive must approve the exemption.

PENALTY FOR NON-COMPLIANCE

Any public employer which does not comply with the new law shall have their economic vitality incentive program payment (revenue-sharing) reduced by 10%.

ALLOCATION OF PAYMENTS

The legislation gives very broad (absolute) discretion to the public employer to allocate its payments for medical benefit plan costs among its employees and elected public officials as it sees fit under the hard cap provision. What this means, is that the employer is free to pay any amount or no amount at all for employee health care costs for any of its employees. Obviously, your employer is obligated to bargain with you concerning how much of your healthcare benefits it will pay. However, it is not obligated to bargain with you regarding how much it will pay for employees or elected officials outside your bargaining

unit. As such, the law gives the employer the opportunity to shift costs for the benefits of an employee or employee group to another employee or group of employees. Likewise, the 80/20 provision does not require that your members pay 20% of their health care costs. It merely requires that the employer pay no more than 80% of its total employee healthcare costs. Indeed, the legislation specifically provides that only elected officials "shall be required to pay 20% or more of the total annual costs of that plan." It gives the employer complete freedom to allocate the employees' share of the total annual costs of medical benefit plans among its employees as it sees fit.

Much litigation concerning this legislation is surely in our near-term future. The legislature prepared it with no consideration for the provisions of PERA. Many public employers seem to believe that they will be able to do the same thing. PERA's role and our bargaining rights must be made a factor in the implementation of this new law.

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Default Plan

All public employers are placed into the hard cap plan by default and may opt-in to the 80/20 plan or opt-out of the act entirely, with exceptions.

Opt-in to 80/20

An employer may opt-in to the 80/20 plan by a simple majority vote. The bill is silent on collective bargaining which allows the union bargaining representative to negotiate with the employer on opting into the 80/20 plan.

Opt-out

Cities, villages, townships, counties, municipal electric utilities, airport authorities and metro parks may elect to opt-out of both hard cap and 80/20 plans, without penalty. The governmental entities must have a 2/3 vote to opt-out, and must be voted on for each medical plan year.

The opt-out does not apply to:

- A school board,
- To a city with a mayor who is both chief executive and chief administrator, unless the mayor also approves the exemption.
- To a county with a county executive who is both chief executive and chief administrator, unless the county executive also approves the exemption.

Hard Cap Plan

- $5,500 for single coverage
- $11,000 for couple coverage
- $15,000 for family coverage

This means an employer, under hard cap plan, cannot pay, including annual premium and illustrative costs, reimbursements for copays, deductibles, payments to health savings accounts, flex spending accounts, more than

- $5,500 times the number of workers with single coverage, plus
- $11,000 times the number of workers with couple coverage, plus
- $15000 time the number of workers with family coverage.

A public employer may however, allocate its payment for health care coverage as it sees fit. The bill is silent on collective bargaining which allows the union bargaining representative to negotiate with the employer on how the allocation will be determined.

The Hard Cap Plan is adjusted annually by the State Treasurer based on the medical component of the U.S. Consumer Price Index.

- The unadjusted 12 months ending July 2011 is an increase of 3.2%.
- The past 10 years show the medical component of US CPI ranging from 2-5% annually.

80/20 Plan

Under this plan an employer cannot pay more than 80% of the total annual costs of all of the medical plans it offers or contributes to for its employees and elected officials. This includes annual premium or illustrative costs, reimbursements for copays, deductibles, payments to health savings accounts, flex spending accounts. It does not include like beneficiary paid payments.

A public employer may however, allocate its payment for health care coverage as it sees fit. This means that the "20%" is not predetermined figure. The bill is silent on collective bargaining which allows the union bargaining representative to negotiate with the employer on how to allocate the 20%.

Effective Date

January 1, 2012. However, if a collective bargaining agreement is in effect before September 15, 2011 the requirements of this Act do not apply until the contract expires or is extended.

A collective bargaining agreement or contract executed on or after September 15 is subject to the terms of this Act.

Who is Impacted

This Act impacts most public workers, including elected officials. It DOES NOT impact state (civil service) or university workers unless SJR-C is passed by 2/3 vote of the House and approved by voters.

Community Colleges ARE impacted by this Act.

Will it impact <u>VEBA participants</u>? Public employers who pay into a VEBA can calculate their maximum legal contribution based upon the hard cap formula.

<u>Low paid workers</u>. Under either plan the employer can choose to aggregate the employer costs and distribute the employee share. This is NOT a prohibited subject of collective bargaining.

<u>HSA and other high deductible plans</u>. Under the hard cap plan, an employer may elect to spend up to the hard cap amount a combination of premium, HSA contributions, Rx reimbursements, etc.

Penalties

Public employers who do not comply with this Act may be penalized by either a 10% reduction of school aid payments, or 10% of economic vitality payments that were included in statutory revenue sharing in 2011. Many counties did not receive much in the way of economic vitality payments and may want to review their options.

Public employers who operate under the hard cap, operate under the 80/20, or who opt-out legally are not subject to penalty.