HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/9/2005 | HB 2390 Harper-Brown

SUBJECT: Exempting certain MEWAs from state regulation

COMMITTEE: Pensions and Investments — favorable, without amendment

VOTE: 7 ayes — Eiland, Flynn, Griggs, Krusee, McClendon, Rodriguez, Straus

0 nays

WITNESSES: For — Carol L. McDonald, Independent Colleges and Universities of Texas, Inc. (*Registering, but not testifying*: Robert M. Galecke, CARES and University of Dallas; Bill Haley, Texas Christian University; James Odom, Baylor University)

Against — None

On — Kevin Brady, Texas Department of Insurance

BACKGROUND: ERISA, the Employee Retirement Income Security Act of 1974, is the federal law governing pension and other employee benefit plans sponsored by private-sector unions or employers. ERISA provides limited federal regulation of health plans, but the act contains a broad preemption provision stating that federal law supersedes any state law that relates to ERISA plans. Consequently, states are prohibited from regulating employee health plans directly.

Multiple Employer Welfare Arrangements (MEWAs) are entities composed of two or more employers who have joined to provide employee health benefits. In 1983, Congress amended ERISA to authorize states to regulate MEWAs. Texas regulates MEWAs under Insurance Code, ch. 846.

DIGEST: HB 2390 would allow two or more private educational institutions to form a benefits consortium to establish a self-funded MEWA. The MEWA would have to file a copy of its articles of incorporation or declaration of trust with the Texas Department of Insurance (TDI) and comply with all ERISA reporting requirements. A MEWA sponsored by a trade association in existence for 10 years or more and in good standing with the secretary of state would be governed solely by ERISA requirements and be exempt from state regulation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS SAY:**

HB 2390 would allow a consortium of private colleges in Texas to operate a non-profit MEWA that would provide long-term stability for health insurance costs. The bill would exempt this consortium from state regulations that were intended to prevent fraud by underfunded MEWAs. The 23-member consortium includes Texas Christian University, University of Dallas, Trinity University, Houston Baptist University, and Austin College, which collectively represent 3,000 faculty and staff members and currently make up the active MEWA participants. This is a well funded consortium that does not present any of the concerns about underfunding and failure to pay claims that led Congress to allow states to regulate MEWAs.

The bill is needed because TDI and the consortium have been unable to agree on one licensing requirement regarding rate setting. State law requires a uniform rate structure for all members, while the consortium wants to determine rates for each member based on each institution's loss experience as well as other factors. The institutions still would share the overall risk, but rates would vary between institutions based on individual loss experience. If the consortium was not allowed to take the loss experience of individual institutions into account, institutions that had good loss experience records might be reluctant to join or stay in the MEWA, leaving only those institutions with weaker loss experience. This would threaten the long-term stability of the MEWA.

Even though the consortium would be exempted from state regulation, it still would be subject to federal oversight by the U.S. Department of Labor, and still would have regular reports and be subject to periodic audits. Any concerns about the funding or operation of the consortium could be addressed through these channels. The bill is narrowly drafted to ensure that only this consortium, which is operated by a well established nonprofit that was founded more than 20 years ago, would be exempted from state MEWA laws.

**OPPONENTS SAY:**

One MEWA should not be exempted from state regulations simply because it does not want to comply with a particular provision of the law. If this consortium does not want to be subject to one requirement, it should

seek an exemption from that provision, but it still should be subject to other requirements, particularly those relating to solvency.

When a MEWA fails, policyholders have no safety net to pay claims. Regulations governing MEWAs were established to protect policyholders and were adopted in response to a number of company failures that left policyholders responsible for unpaid claims. All policyholders insured through a MEWA should be assured of the protections of state law, particularly those regarding company solvency.

NOTES: The companion bill, SB 1739 by Carona, was reported favorably, without amendment, by the Senate State Affairs Committee on May 2 and recommended for the Local and Uncontested Calendar.