

# HOUSE BILL REPORT

## SB 5640

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**As Reported by House Committee On:**  
State Government & Tribal Affairs

**Title:** An act relating to authorizing tribal governments to participate in public employees' benefits board programs.

**Brief Description:** Authorizing tribal governments to participate in public employees' benefits board programs.

**Sponsors:** Senators Kauffman, Fairley, Prentice, Swecker, Rockefeller, Fraser, Kohl-Welles, Shin, Rasmussen and Kline; by request of Health Care Authority.

**Brief History:**

**Committee Activity:**

State Government & Tribal Affairs: 3/21/07, 3/28/07 [DP].

**Brief Summary of Bill**

- Allows tribal governments to apply to participate in the Public Employees Benefits Board programs under the same conditions and requirements as counties, municipalities, and other political subdivisions.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, McDermott, Miloscia and Ormsby.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member and Kretz.

**Staff:** Alison Hellberg (786-7152).

**Background:**

Public Employees Benefits Board (PEBB)

The State of Washington, through the PEBB program, provides medical, dental, life, and long-term disability coverage through private health insurance plans to eligible state and higher-education employees as a benefit of employment. Counties, municipalities, and other

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political subdivisions, known as employer groups, may also provide PEBB coverage to their employees. The PEBB establishes eligibility requirements and also approves employee premium contributions. Employer groups seeking to participate in the PEBB program must apply to the Health Care Authority, and if approved, are charged a premium that covers the cost of providing PEBB benefits to its employees.

#### Pension Protection Act of 2006

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. The ERISA limits the authority of states to regulate employee benefit plans. In general, however, the ERISA does not apply to group health plans established or maintained for its employees by the government of the United States, any state, or a political subdivision.

Under the ERISA, the term "governmental plan" is defined to clarify which plans can be regulated by state law and are not subject to many of the provisions of the ERISA. In August 2006, the federal Pension Protection Act was enacted and amended the ERISA. The term "governmental plan" now includes a plan that is established and maintained by an Indian tribal government, a subdivision of an Indian tribal government, or an agency or instrumentality of either. Further, employees covered by such a plan must perform essential governmental functions and not perform commercial activities, whether or not those activities qualify as essential governmental functions.

#### The Centennial Accord

The Centennial Accord (Accord), executed in 1989, provides a framework for the government-to-government relationship between federally recognized Indian tribes in Washington and the State of Washington. The Accord requires that individual agencies develop plans to implement the government-to-government policy. In consultation with tribes, the Health Care Authority (HCA) developed its 2005-07 Accord Plan to include, among others, these goals:

- seek new opportunities for state-tribal partnerships in health care to make affordable, quality health care more accessible and make an impact on decreasing American Indian/Alaska Native health disparities; and
- examine the policy issue of extending access to the PEBB coverage to tribal governments for their employees, as a benefit of employment.

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#### **Summary of Bill:**

Consistent with the Accord, the New Millennium Agreement, related treaties, and federal and state law, tribal governments may apply to participate in the PEBB's programs under the same conditions and requirements as counties, municipalities, and other political subdivisions.

"Tribal government" means an Indian tribal government, as defined in the ERISA, that has government offices principally located in Washington.

The HCA has authority to establish criteria for participation of tribal governments in the PEBB and to approve or reject applications by tribal governments. The HCA must ensure continuation of the PEBB as a "governmental plan" under federal ERISA provisions. The HCA has authority to establish the contributions paid by participating tribal governments. To limit adverse impacts on state employee insurance rates, the HCA is authorized to limit participation of tribal governments.

Employees of participating tribal governments may enroll in the PEBB long-term care insurance plans. Retired employees of participating tribal governments may continue to participate in the PEBB programs after retirement subject to the terms, conditions, and benefits set by the PEBB. Retired or disabled employees of tribal governments enrolled in Medicare parts A and B may enroll in PEBB Medicare supplemental insurance.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect January 1, 2009.

**Staff Summary of Public Testimony:**

(In support) This bill stems from a change in the federal law, the Centennial Accord, hard work, and collaboration between tribes and state agencies. The tribes in Washington employ a large group of people so this bill is good for communities. Under current law, certain governmental entities may voluntarily participate in the PEBB programs. This is extremely attractive for smaller governmental entities. This bill treats tribes like other governmental entities and allows them to participate in the PEBB programs.

Tribes, like other smaller governmental entities, struggle to provide competitive benefits to employees. Tribes are increasingly becoming employers and 70 percent of their employees are non-tribal persons. Tribes are generally smaller employers and frequently lose potential employees because other entities are able to offer much better benefits. This bill comes at no cost to the state and could possibly even benefit the state. This bill will definitely benefit smaller tribes in rural areas.

(Opposed) None.

**Persons Testifying:** Senator Kauffman, prime sponsor; Barney Speight and Dennis Martin, Health Care Authority; and Marty Loesch, Swinomish Tribe.

**Persons Signed In To Testify But Not Testifying:** None.