

HOUSE BILL 1374

K4

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By: **Delegates Kach, Frank, Krebs, Levy, and Serafini**

Introduced and read first time: February 18, 2010

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Retirement and Pension System – Optional Retirement Program –**
3 **Membership and Participation**

4 FOR the purpose of providing that certain employees are not members of the
5 Employees' Retirement or Pension Systems or the Teachers' Retirement or
6 Pension Systems of the State Retirement and Pension System if the employees
7 make certain elections to join a certain other retirement program; requiring
8 that certain participating employers provide certain employees with the
9 opportunity to participate in the optional retirement program of the State
10 Retirement and Pension System; providing that certain supervising employers
11 are not responsible for the payment of certain benefits payable under the
12 optional retirement program; requiring certain supervising employers to
13 administer certain aspects of the participation of certain employees
14 participating in the optional retirement program; providing that certain
15 employees are eligible to participate in the optional retirement program;
16 requiring that certain employees who elect to participate in the optional
17 retirement program make such an election within a certain period of time;
18 defining a certain term; and generally relating to participation in the optional
19 retirement program of the State Retirement and Pension System.

20 BY repealing and reenacting, with amendments,
21 Article – State Personnel and Pensions
22 Section 22–201, 23–201, 30–101, 30–201, 30–202, 30–207, 30–210, 30–301,
23 30–302, 30–303, 30–305, and 30–307
24 Annotated Code of Maryland
25 (2009 Replacement Volume and 2009 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

28 **Article – State Personnel and Pensions**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 22–201.

2 (a) Except as provided in subsection (b) of this section, §§ 22–202 through
3 22–204 of this subtitle apply only to:

4 (1) a regular employee whose compensation is provided by State
5 appropriation or paid from State funds;

6 (2) an appointed or elected official of the State, including:

7 (i) a clerk of the circuit court;

8 (ii) a register of wills;

9 (iii) a State’s Attorney; and

10 (iv) a sheriff;

11 (3) an employee or official of a participating governmental unit who is
12 eligible to participate under Title 31, Subtitle 1 of this article;

13 (4) an employee of the Office of the Sheriff of Baltimore City;

14 (5) a permanent employee of the board of supervisors of elections of a
15 county;

16 (6) an employee of the Maryland Environmental Service who is a
17 member of the Employees’ Retirement System on June 30, 1993;

18 (7) an employee of Dorchester County who is not a member of the
19 county’s general pension and retirement program and who is a member of the
20 Employees’ Retirement System;

21 (8) a court reporter for the Circuit Court for Charles County who is a
22 member of the Employees’ Retirement System on July 1, 1994; and

23 (9) a staff employee of the University System of Maryland, Morgan
24 State University, or St. Mary’s College who is a member of the Employees’ Retirement
25 System as of January 1, 1998.

26 (b) Sections 22–202 through 22–204 of this subtitle do not apply to:

27 (1) an individual who is a member of any State system other than the
28 Employees’ Retirement System;

29 (2) an individual who is entitled to be a member of any State system
30 other than the Employees’ Retirement System or the Employees’ Pension System;

- 1 (3) a contractual, emergency, or temporary extra employee;
- 2 (4) an individual who is employed under a federal public service
3 employment program;
- 4 (5) an assessor who is a member of a retirement or pension system
5 operated by a political subdivision of the State; [or]
- 6 (6) an employee of a local board of elections who chooses to stay in a
7 local merit system under § 2–207 of the Election Law Article; **OR**
- 8 **(7) AN INDIVIDUAL WHO HAS ELECTED TO PARTICIPATE IN AN**
9 **OPTIONAL RETIREMENT PROGRAM UNDER TITLE 30 OF THIS ARTICLE.**
- 10 23–201.
- 11 (a) Except as provided in subsection (b) of this section, §§ 23–203 through
12 23–205 of this subtitle apply only to:
- 13 (1) a regular employee whose compensation is provided by State
14 appropriation or paid from State funds;
- 15 (2) an appointed or elected official of the State, including:
- 16 (i) a clerk of the circuit court;
- 17 (ii) a register of wills;
- 18 (iii) a State’s Attorney; and
- 19 (iv) a sheriff;
- 20 (3) an employee or official of a participating governmental unit who is
21 eligible to participate under Title 31, Subtitle 1 of this article;
- 22 (4) an employee of the Office of the Sheriff of Baltimore City;
- 23 (5) an additional employee or agent of the State Racing Commission
24 authorized by § 11–207 of the Business Regulation Article;
- 25 (6) a permanent employee of the board of supervisors of elections of a
26 county;
- 27 (7) a full-time master in chancery or in juvenile causes who is
28 appointed on or after July 1, 1989, in any county by the circuit court for that county;

1 (8) an employee of the Maryland Environmental Service who is a
2 member of the Employees' Pension System on June 30, 1993, or transfers from the
3 Employees' Retirement System on or after July 1, 1993;

4 (9) a former Baltimore City jail employee who became an employee of
5 the Baltimore City Detention Center and a member of the Employees' Pension System
6 on July 1, 1991;

7 (10) a nonfaculty employee of the Baltimore City Community College
8 who:

9 (i) is a member of the Employees' Pension System on October 1,
10 2002;

11 (ii) transfers from the Employees' Retirement System on or
12 after October 1, 2002;

13 (iii) transfers from the Teachers' Pension System in accordance
14 with § 23-202.1 of this subtitle; or

15 (iv) becomes an employee of the Baltimore City Community
16 College on or after October 1, 2002;

17 (11) a court reporter for the Circuit Court for Charles County who is a
18 member of the Employees' Pension System on July 1, 1994, or transfers from the
19 Employees' Retirement System on or after July 1, 1994;

20 (12) a staff employee of the University System of Maryland, Morgan
21 State University, or St. Mary's College who is:

22 (i) a member of the Employees' Pension System on January 1,
23 1998, or transfers from the Employees' Retirement System on or after January 1,
24 1998; or

25 (ii) a staff employee of the University System of Maryland,
26 Morgan State University, or St. Mary's College who becomes an employee on or after
27 January 1, 1998;

28 (13) on or after the date that the Board of Education of Kent County
29 begins participation in the Employees' Pension System, a supportive service employee
30 of the Board of Education of Kent County;

31 (14) an employee of the Town of Oakland on or after the date that the
32 Town of Oakland begins participation in the Employees' Pension System;

33 (15) an employee of the City of Frostburg on or after the date that the
34 City of Frostburg begins participation in the Employees' Pension System;

1 (16) an employee of the Town of Berwyn Heights on or after the date
2 that the Town of Berwyn Heights begins participation in the Employees' Pension
3 System;

4 (17) an employee of the Town of Sykesville on or after the date that the
5 Town of Sykesville begins participation in the Employees' Pension System; and

6 (18) an employee of the Town of University Park on or after the date
7 that the Town of University Park begins participation in the Employees' Pension
8 System.

9 (b) Sections 23–203 through 23–205 of this subtitle do not apply to:

10 (1) an individual who is or is entitled to be a member of any State
11 system other than the Employees' Pension System;

12 (2) a contractual, emergency, or temporary extra employee;

13 (3) an individual who is employed under a federal public service
14 employment program;

15 (4) an assessor who is a member of a retirement or pension system
16 operated by a political subdivision of the State;

17 (5) an employee of a local board of elections who chooses to stay in a
18 local merit system under § 2–207 of the Election Law Article;

19 (6) a nonclerical or nonprofessional employee of the Baltimore City
20 Community College who:

21 (i) was an employee of the New Community College of
22 Baltimore during the 1989–1990 academic year;

23 (ii) was employed by the New Community College of Baltimore
24 on or before December 31, 1990, as a “Class A” member of the Baltimore City
25 Retirement Plan; and

26 (iii) elected to remain a member of the Baltimore City
27 Retirement Plan;

28 (7) an employee who is not a member of a State system and who
29 accepts a position for which the budgeted hours per fiscal year are less than 500 hours
30 in the first fiscal year of employment;

31 (8) an employee of the Domestic Relations Division of the Anne
32 Arundel County Circuit Court who:

1 (i) was transferred on or after July 1, 2002, into the State
2 Personnel Management System as an employee of the Child Support Enforcement
3 Administration of the Maryland Department of Human Resources;

4 (ii) elected, under § 2–510 of the Courts Article, to remain as a
5 participant in the Anne Arundel County Retirement and Pension System; and

6 (iii) remains as an employee of the Child Support Enforcement
7 Administration of the Maryland Department of Human Resources or an attorney
8 employed to represent the Child Support Enforcement Administration;

9 (9) a nonfaculty employee of the Baltimore City Community College
10 who is eligible to participate and elects to participate in an optional retirement
11 program under Title 30 of this article;

12 (10) an appointed or elected official who on or after July 1, 2007, is a
13 member of any other State or local retirement or pension system as defined under
14 Title 37 of this article; [or]

15 (11) the Director of the Department of Social Services in Montgomery
16 County who:

17 (i) was transferred into the State Personnel Management
18 System as an employee of the Social Services Administration of the Maryland
19 Department of Human Resources;

20 (ii) elected, under § 3–403.1 of the Human Services Article, to
21 remain as a participant in the Montgomery County Employees’ Retirement System;
22 and

23 (iii) remains as an employee of the Social Services
24 Administration of the Maryland Department of Human Resources; **OR**

25 **(12) AN INDIVIDUAL WHO HAS ELECTED TO PARTICIPATE IN AN**
26 **OPTIONAL RETIREMENT PROGRAM UNDER TITLE 30 OF THIS ARTICLE.**

27 30–101.

28 (a) In this title the following words have the meanings indicated.

29 (b) (1) “Annuity contract” means a fixed or variable annuity contract or
30 combination of fixed or variable annuity contracts authorized under § 403(a) or (b) of
31 the Internal Revenue Code.

32 (2) “Annuity contract” includes a custodial account to be invested in
33 regulated investment company stock as provided in § 401(f) or § 403(b)(7) of the
34 Internal Revenue Code.

1 (c) "Designated company" means an entity that:

2 (1) on or before March 1, 1993, was designated by the governing board
3 of an employing institution to offer annuity contracts under the program; or

4 (2) is designated by the Board of Trustees.

5 (d) "Eligible employee" means an individual eligible to participate in the
6 program.

7 (e) "Employing institution" means:

8 (1) the University System of Maryland;

9 (2) Morgan State University;

10 (3) St. Mary's College;

11 (4) the Maryland Higher Education Commission with respect to
12 eligible employees of the Commission; and

13 (5) any community college or regional community college established
14 under Title 16 of the Education Article.

15 (f) "Participating employee" means an eligible employee who elects to
16 participate in the program.

17 (g) "Pension system" means the Employees' Pension System or the Teachers'
18 Pension System.

19 (h) "Program" means the optional retirement program established under §
20 30-201 of this title.

21 (i) "Retirement system" means the Employees' Retirement System or the
22 Teachers' Retirement System.

23 (j) **"SUPERVISING EMPLOYER" MEANS:**

24 **(1) ANY UNIT OF STATE GOVERNMENT;**

25 **(2) A COUNTY BOARD OF EDUCATION OR THE BALTIMORE CITY**
26 **BOARD OF SCHOOL COMMISSIONERS;**

27 **(3) A LIBRARY THAT IS ESTABLISHED UNDER THE EDUCATION**
28 **ARTICLE; OR**

1 **(4) AN EMPLOYING INSTITUTION.**

2 **(K)** “Supplemental retirement plans” means plans established pursuant to §
3 30–401 of this title.

4 30–201.

5 (a) There is an optional retirement program in which eligible employees may
6 participate.

7 (b) Under the program, annuity contracts offered by a designated company
8 that provide retirement and death benefits may be purchased for participating
9 employees.

10 (c) (1) The Board of Trustees shall administer the program to the extent
11 provided in this title.

12 (2) The State Retirement Agency shall carry out the administrative
13 duties of the Board of Trustees.

14 (d) The program shall be offered by each [employing institution]
15 **SUPERVISING EMPLOYER.**

16 30–202.

17 (a) The Board of Trustees may designate not more than four companies, in
18 addition to the company that was designated by a governing board of an employing
19 institution on or before March 1, 1993, from which annuity contracts are to be
20 purchased under the program.

21 (b) (1) The Board of Trustees shall approve the form and contents of
22 annuity contracts to be offered by a company that is designated by the Board of
23 Trustees under subsection (a) of this section.

24 (2) The Board of Trustees may also approve the form and contents of
25 additional types of annuity contracts to be offered for the first time after October 1,
26 1993, by the company designated by the governing board of an employing institution
27 on or before March 1, 1993.

28 (c) In making the designation and giving approval under this section, the
29 Board of Trustees shall consider:

30 (1) the nature and extent of the rights and benefits to be provided by
31 the annuity contracts for participating employees and their beneficiaries;

32 (2) the relation of those rights and benefits to the amount of
33 contributions to be made;

1 (3) the suitability of the rights and benefits to the needs of the
2 participating employees and the interests of the [employing institutions]
3 **SUPERVISING EMPLOYERS** in the recruitment and retention of participating
4 employees;

5 (4) the ability of the company to provide for suitable rights and
6 benefits under the annuity contracts;

7 (5) the selection of annuity contracts offered by the company;

8 (6) the financial stability of the company and whether the company
9 meets minimum financial criteria, if any, including a minimum net worth
10 requirement, if any, established by the Board of Trustees; and

11 (7) the effect of any fees, commissions, or other charges imposed or
12 collected in connection with an annuity contract.

13 30-207.

14 Benefits under the program:

15 (1) shall be payable to participating employees or their beneficiaries in
16 accordance with the terms of the annuity contracts; and

17 (2) are not payable by [the State or governing board of an employing
18 institution] **A SUPERVISING EMPLOYER**.

19 30-210.

20 With respect to a participating employee who is employed by [an employing
21 institution or an institution over which the employing institution has administrative
22 authority, the employing institution] **A SUPERVISING EMPLOYER, THE**
23 **SUPERVISING EMPLOYER** shall administer the participating employee's enrollment,
24 termination, or retirement under the program.

25 30-301.

26 (a) An individual is eligible to participate in the program if the individual is
27 eligible for membership in a retirement system or a pension system and is:

28 (1) a member of the faculty of an employing institution;

29 (2) a professional employee at a community college or regional
30 community college established under Title 16 of the Education Article;

1 (3) an employee of the University System of Maryland who is in a
2 position designated as exempt under a policy adopted by the University System of
3 Maryland Board of Regents;

4 (4) an employee of Morgan State University who is in a position
5 designated as professional or administrative by the Board of Regents of Morgan State
6 University; [or]

7 (5) an employee of St. Mary's College of Maryland who is in a position
8 determined by the Board of Trustees of the College to be a professional or faculty
9 position;

10 **(6) A REGULAR EMPLOYEE WHOSE COMPENSATION IS PROVIDED**
11 **BY STATE APPROPRIATION OR PAID FROM STATE FUNDS;**

12 **(7) AN APPOINTED OR ELECTED OFFICIAL OF THE STATE,**
13 **INCLUDING:**

14 **(I) A CLERK OF THE CIRCUIT COURT;**

15 **(II) A REGISTER OF WILLS;**

16 **(III) A STATE'S ATTORNEY; AND**

17 **(IV) A SHERIFF;**

18 **(8) AN EMPLOYEE OF A DAY SCHOOL IN THE STATE UNDER THE**
19 **AUTHORITY AND SUPERVISION OF A COUNTY BOARD OF EDUCATION OR THE**
20 **BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS, EMPLOYED AS:**

21 **(I) A CLERK;**

22 **(II) A HELPING TEACHER;**

23 **(III) A PRINCIPAL;**

24 **(IV) A SUPERINTENDENT;**

25 **(V) A SUPERVISOR; OR**

26 **(VI) A TEACHER;**

27 **(9) A LIBRARIAN OR CLERICAL EMPLOYEE OF A LIBRARY THAT IS**
28 **ESTABLISHED OR OPERATES UNDER THE EDUCATION ARTICLE;**

1 **(10) A STAFF EMPLOYEE OF THE UNIVERSITY SYSTEM OF**
2 **MARYLAND, MORGAN STATE UNIVERSITY, OR ST. MARY'S COLLEGE WHO IS A**
3 **MEMBER OF THE TEACHERS' PENSION SYSTEM AS OF JANUARY 1, 1998, OR**
4 **WHO TRANSFERS FROM THE TEACHERS' RETIREMENT SYSTEM ON OR AFTER**
5 **JANUARY 1, 1998; OR**

6 **(11) A NONFACULTY EMPLOYEE OF THE BALTIMORE CITY**
7 **COMMUNITY COLLEGE WHO:**

8 **(I) IS A MEMBER OF THE TEACHERS' PENSION SYSTEM AS**
9 **OF OCTOBER 1, 2002, AND DOES NOT TRANSFER TO THE EMPLOYEES' PENSION**
10 **SYSTEM IN ACCORDANCE WITH § 23-202.1 OF THIS ARTICLE; OR**

11 **(II) TRANSFERS FROM THE TEACHERS' RETIREMENT**
12 **SYSTEM ON OR AFTER OCTOBER 1, 2002.**

13 (b) (1) This subsection applies to an individual who:

14 (i) on August 22, 2004, was eligible to participate in the
15 program; and

16 (ii) is in a position that, as of August 23, 2004, was reclassified
17 by the University System of Maryland Board of Regents or the Board of Regents of
18 Morgan State University and would no longer be eligible for participation in the
19 program under subsection (a) of this section.

20 (2) An individual described under paragraph (1) of this subsection may
21 continue to participate in the program if the individual:

22 (i) would otherwise be eligible for membership in a system
23 under the State Retirement and Pension System; and

24 (ii) is employed by an employing institution.

25 30-302.

26 (a) An election to participate in the program shall be made by an eligible
27 employee within 1 year of first becoming an eligible employee of [an employing
28 institution] **A SUPERVISING EMPLOYER.**

29 (b) An eligible employee's election to participate in the program is a
30 one-time irrevocable election.

31 30-303.

32 (a) An eligible employee shall elect to:

1 (1) join a pension or retirement system in accordance with the
2 provisions of this Division II applicable to that system; or

3 (2) participate in the program.

4 (b) An eligible employee shall:

5 (1) make an election under this section in writing; and

6 (2) file the election with the Board of Trustees and the [employing
7 institution] **SUPERVISING EMPLOYER** within 1 year of first becoming an eligible
8 employee of [an employing institution] **A SUPERVISING EMPLOYER**.

9 (c) An eligible employee may not participate in the program if both the
10 Board of Trustees and the [employing institution] **SUPERVISING EMPLOYER** have
11 not received the eligible employee's written election required under subsection (b) of
12 this section, within 1 year of first becoming an eligible employee with [an employing
13 institution] **A SUPERVISING EMPLOYER**.

14 (d) The effective date of the election shall be the first day of the month after
15 the election.

16 30–305.

17 (a) This section applies only to a State employee who becomes eligible to
18 elect participation in the program if the employee is appointed, promoted, transferred,
19 or reclassified to a position as an eligible employee.

20 (b) A State employee described in subsection (a) of this section may elect to
21 participate in the program.

22 (c) An eligible employee shall:

23 (1) make an election under this section in writing; and

24 (2) file the election with the Board of Trustees and the [employing
25 institution] **SUPERVISING EMPLOYER** within 1 year of first becoming an eligible
26 employee of [an employing institution] **A SUPERVISING EMPLOYER**.

27 (d) An eligible employee may not participate in the program if both the
28 Board of Trustees and the [employing institution] **SUPERVISING EMPLOYER** have
29 not received the eligible employee's written election required under subsection (c) of
30 this section, within 1 year of first becoming an eligible employee with [an employing
31 institution] **A SUPERVISING EMPLOYER**.

32 30–307.

1 (a) Except as otherwise provided in this section, an election to participate in
2 the program is a waiver of all rights and benefits provided by the retirement or
3 pension system in which the participating employee was a member on the effective
4 date of the election.

5 (b) For the purpose of determining eligibility for immediate vested rights or
6 benefits in a retirement system or pension system, an eligible employee who is a
7 member of that State system when the employee elects to participate in the program is
8 deemed to have separated from employment on the effective date of the election.

9 (c) The Board of Trustees may only compute retirement system or pension
10 system benefits on the basis of years of creditable service as a member of that State
11 system.

12 (d) (1) This section applies only to a participating employee whose last
13 employer prior to joining the program was a participating employer that does not
14 participate in the employer pick-up program as defined in § 414(h)(2) of the Internal
15 Revenue Code.

16 (2) A participating employee may withdraw any accumulated
17 contributions in the annuity savings fund on or after the effective date of the
18 participating employee's election to join the program.

19 (3) If a participating employee withdraws the accumulated
20 contributions, the participating employee forfeits any right to a benefit in the State
21 system from which the accumulated contributions were withdrawn.

22 (e) A participating employee is ineligible for membership in a retirement
23 system or pension system while the participating employee is employed in any eligible
24 position by any [employing institution] **SUPERVISING EMPLOYER.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 July 1, 2010.