Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 862 (Senators Lenett and Harrington)
Budget and Taxation

Public Pension Fund Protection Act

This bill prohibits members of the Board of Trustees of the State Retirement and Pension System (SRPS), members of the board's investment committee, the executive director of the State Retirement Agency (SRA), the system's chief investment officer (CIO), and staff members of SRA's investment division from serving as placement agents on behalf of investment managers for at least two years after leaving their positions. It also requires the board to adopt specified disclosure requirements related to placement agents representing investment managers.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: To the extent that the bill's information collection and reporting requirements may not be absorbable within existing budgeted resources, special fund expenditures by SRA increase to implement the bill. No effect on revenues.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A "placement agent" is defined as a person or entity that, on behalf of another person or entity, promotes, markets, offers, or sells interests in specific investment vehicles in the State. It does not include employees of the entity on whose behalf the placement agent is working.

The SRPS board must adopt policies that require the disclosure of relationships between investment managers, placement agents, and board members or investment staff. The disclosures must include, among other things, information on the placement agent's background and experience, compensation, and services provided. Any investment manager or placement agent who violates the disclosure requirements is barred from soliciting any new investment for five years after the violation. The board is authorized to reduce that prohibition to two years by majority vote in an open meeting. Investment managers must agree in writing to comply with the disclosure policies prior to entering into any agreement with the board or CIO.

The board must also adopt policies requiring the disclosure of campaign contributions and gifts made by investment managers and placement agents to any elected official of the State or political subdivision of the State as well as members of the SRPS board and SRA investment staff. Disclosures must be made in the manner provided by the State ethics law.

Current Law: The SRPS board oversees a pension fund in excess of $30 billion. The board consists of 14 members including five members elected by employees and retirees of the several systems; six members appointed by the Governor; and three *ex officio* members. Of the five elected members, two represent active members of the combined employees' plans and combined teachers' plans, respectively; two represent retirees of the same two sets of plans; and one represents State Police officers and retirees. Five of the appointed members represent the public and one represents local governments. The three *ex officio* members are the State Treasurer, State Comptroller, and Secretary of Budget and Management.

All pension fund assets are managed externally by investment managers selected by the CIO to manage the assets in exchange for a management fee based on assets under management and/or asset performance.

Background: The board previously considered adopting a formal policy regarding the use of placement agents pending possible action by the federal Securities and Exchange Commission (SEC). The issue of placement agents emerged in April 2009 when SEC and New York State Attorney General's Office announced indictments stemming from an investigation of potential corruption involving the New York State Common Retirement Fund. The indictments allege that certain private equity firms and hedge funds paid placement agent fees to associates of the former New York State Comptroller, whose office administers the retirement fund, in exchange for contracts to manage pension fund assets (referred to as "pay to play"). Such payments to placement agents maybe legal, if they are not intended as kickbacks in exchange for business.

In response, the New York State Common Retirement Fund and several other New York-based funds have banned the use of placement agents completely. In July 2009, the New Mexico Investment Council followed suit. Other funds, including the California Public Employees Retirement System, have adopted tighter disclosure and reporting requirements for placement agents. SRPS considered adopting similar disclosure rules but deferred action when the SEC announced its consideration of a complete ban on placement agents. The SEC has since reconsidered its position and has not taken any action to ban placement agents.

In October 2009, the National Association of State Retirement Administrators (NASRA) reaffirmed its long-standing resolutions promoting ethics policies and disclosure requirements for managers of public pension funds. NASRA resolutions adopted in 1999 and 2005 encourage members to abide by the strictest ethical standards and to adopt or revise disclosure requirements and ethics policies to ensure that providers meet fiduciary standards.

State elections law regulates the provision and reporting of campaign contributions to elected officials, and State ethics law regulates the provision and reporting of gifts to public officials.

State Fiscal Effect: The bill has no direct fiscal effect on SRA, but it does have an extensive operational effect on the agency, especially investment division staff. Investment division staff are primarily responsible for monitoring the performance of external investment managers, identifying new investment opportunities, and performing due diligence on potential new managers. Collecting and reporting information from current and potential investment managers and from placement agents to meet the bill's disclosure requirements shifts staff resources away from those core functions, potentially increasing investment risk within the portfolio and ultimately affecting investment performance. To the extent that data collection responsibilities are not absorbable within existing budgeted resources without impinging on core responsibilities, special fund expenditures by SRA may increase to hire staff or consulting help in meeting the bill's requirements.

Small Business Effect: Small investment management firms that use placement agents to sell their services to SRPS will have to meet the bill's disclosure requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Retirement Agency, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2010
mlm/rhh

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510