HB 194

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 194 (Delegate Rosenberg, *et al.*)
Appropriations

Optional Retirement Program - Payment of Benefits - Criteria

This bill makes benefits from the Optional Retirement Program (ORP) payable when a participating employee separates from employment or reaches age 70.5, whichever comes *first*. The bill does not impair any obligations or rights under presently existing annuity contracts.

Fiscal Summary

State Effect: None, assuming that withdrawal of ORP assets by active employees does not affect their membership in ORP.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: ORP is a tax-favored defined contribution retirement savings plan available to designated employees of the institutions listed below as an alternative to membership in the State Retirement and Pension System (SRPS):

- the University System of Maryland (USM);
- Morgan State University;
- St. Mary's College of Maryland;
- the Maryland Higher Education Commission (MHEC); and
- community colleges or regional community colleges in the State, including Baltimore City Community College.

ORP provides an employer contribution of 7.25% of a member's compensation, which is paid by employing institutions. Unlike SRPS plans, there is no mandated employee contribution in ORP; in fact, employee contributions are not authorized. Vesting in ORP is immediate, member accounts are portable, and members may invest their accounts in any of many investment options offered by the plan administrators, which are selected by the Board of Trustees of SRPS. Current plan administrators are TIAA-CREF and Fidelity Investments. Upon retirement, members may elect to purchase annuities with their accumulated funds.

To join ORP, individuals in employing institutions must be eligible for membership in SRPS and be:

- eligible (professional) employees of MHEC;
- members of the faculty of an employing institution;
- professional employees of a community college;
- nonclassified employees of USM;
- professional or administrative employees of Morgan State University; or
- professional employees or faculty members of St. Mary's College of Maryland.

ORP is authorized under § 403(b) of the federal Internal Revenue Code (IRC), which applies only to employees of educational institutions and specified nonprofit organizations. A decision to join ORP is a one-time, irrevocable decision that must be made within one year of becoming eligible to join ORP. ORP members are not eligible to participate in any of the defined benefit plans offered by the State.

Under IRC § 403(b), members of ORP *must* begin taking distributions from ORP by April 1 of the calendar year following the *later* of the year in which the employee reaches age 70.5 or the year in which the employee retires, but they *may* be taken at the *earlier* of the two dates. The Maryland ORP plan document specifies that benefits are not payable until the employee separates from employment. Therefore, members who continue working beyond age 70.5 are not eligible to receive payments from ORP until they separate from employment or retire.

With regard to ORP, SRPS is charged with the selection of plan vendors and the approval of the form and content of annuity contracts offered by the vendors. It is explicitly not responsible for (1) retirement counseling; (2) preparing or disseminating information with respect to annuity contracts; or (3) enrolling, terminating, or retiring participating employees. Those tasks typically are carried out by employing institutions. ORP assets are not considered assets of the State, and payment of ORP benefits is not an obligation of the State.

State Fiscal Effect: Under State pension law, SRPS members who withdraw their contributions forfeit membership in the system. State law is silent regarding the membership status of ORP members who withdraw their account balance but continue employment with an eligible institution, largely because, under current rules, such payments are not allowed. If, under the bill, a member withdraws all ORP assets from his or her account prior to separation from employment, it is possible that the individual would no longer be considered a member of ORP. In this instance, the State would no longer have to make employer contributions on the individual's behalf, generating a savings to the State. However, the Department of Legislative Services believes that, if that is the case, members would not make a full withdrawal of all assets and forego membership in ORP; instead, they would elect to leave at least a portion of their assets in the plan to maintain membership. Therefore, there is no anticipated effect on State contributions to ORP members.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Higher Education Commission, Maryland Supplemental Retirement Plans, Maryland State Retirement Agency, Buck Consultants, University System of Maryland, Department of Legislative Services

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mc/rhh

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