

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 401

(Senator Guzzone)(Chair, Joint Committee on Pensions)

Budget and Taxation

Appropriations

State Retirement and Pension System - Membership Elections

This bill (1) makes membership in a State Retirement and Pension System (SRPS) plan mandatory for specified employees of Prince George's County for whom membership is currently optional; (2) requires that an election to join an SRPS plan when membership is optional be made upon *commencement* of employment instead of within one year of employment; (3) under limited circumstances, bars some employees from joining the Optional Retirement Plan (ORP); and (4) specifies the conditions under which an eligible governmental unit may join an SRPS plan. The bill also requires the Secretary of State Police to join the State Police Retirement System.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: Due to the limited application of the bill's provisions, they are not expected to have a discernible effect on State pension liabilities or contribution rates; eliminating the time period for optional elections provides operational efficiencies for the State Retirement Agency. The SRPS board can consider requests for participation by an eligible governmental unit with existing resources. No effect on revenues.

Local Effect: Due to the limited application of the bill's provisions, they are not expected to have a discernible effect on participating governmental unit (PGU) pension liabilities or contribution rates. The provisions may dissuade some local governments from joining SRPS to the extent that they cannot offer their existing employees an option to join SRPS or remain in a local plan.

Small Business Effect: None.

Analysis

Bill Summary: An employee who is otherwise eligible to join ORP, but who has previously been a member of a plan within SRPS, including while employed by a PGU, may not be offered the opportunity to join ORP. Instead, the individual is a member of any SRPS plan for which membership is a condition of employment. In addition, a new employee who is eligible for membership in ORP and has never been a member of another SRPS plan must make an election to join ORP at the commencement of employment.

The Secretary of State Police is made a member of the State Police Retirement System as a condition of employment, instead of having the option to instead join the Employees' Pension System (EPS). Membership in EPS is not optional for a specified employee of Prince George's County hired on or after July 1, 2014, if the employee was previously employed by Prince George's County.

The bill generally prevents an existing employee of an eligible governmental unit that seeks to join an SRPS plan from becoming a member of that plan if, at the time the unit joins SRPS and becomes a PGU:

- it participates in the “pick-up” program of the SRPS plan it is joining, and prior to joining the SRPS plan, it had its own plan that had a pick-up program; and
- the employee contribution rates between the SRPS plan and the PGU plan are different.

Under these circumstances, the employee would have to remain in the local plan rather than join the SRPS plan. However, the bill allows an eligible governmental unit seeking to join an SRPS plan, whose existing employees are prevented from joining the plan due to the requirements described above, to submit a request to the SRPS Board of Trustees to allow those employees to participate in the plan. Upon receiving such a request, the board must determine whether legislation is necessary to allow the eligible governmental unit to participate in the SRPS plan. The board must then make recommendations to the Joint Committee on Pensions (JCP) regarding legislation that it determines is necessary to allow the eligible governmental unit to participate in the SRPS plan.

If a withdrawing PGU begins offering its own plan with a pick-up program and a different contribution rate, an optional membership election by an existing employee is not allowed under the bill. In an instance where an optional election is still allowed, it must be made at the time the PGU joins or withdraws.

Current Law: In general, membership in an SRPS plan is a condition of employment, but it is optional for specified individuals. The two most common circumstances in which membership is optional involve (1) employees who are eligible to join ORP and

(2) employees of PGUs with their own plans who are joining an SRPS plan. In the latter instance, some PGUs elect to provide their existing employees with a choice to either remain in the existing local plan or join the SRPS plan; new employees are members of the SRPS plan as a condition of their employment with the PGU. Similarly, when a PGU withdraws from SRPS in order to establish its own local plan, it often gives existing employees the option of remaining in SRPS or joining the local plan. Often, employees are given six months to a year to make that election. Under the circumstances described above, such elections are generally not allowed under the bill; when they are allowed, they must be made concurrent with the PGU joining or withdrawing without a one-year lag.

Membership in EPS is optional for individuals hired into any of six specified positions in Prince George's County on or after July 1, 2014.

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 SRPS:

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

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

- members of the faculty of an employing institution;
- professional employees of a community college;
- employees of USM exempt from the federal Fair Labor Standards Act (FLSA);
- executive or professional administrative employees of MSU;
- employees of SMCM exempt from FLSA; or
- professional employees of MHEC.

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 SRPS plan. The State contributes 7.25% of members' earnable compensation to ORP; there is no employee contribution.

Background: Recent rulings by the Internal Revenue Service (IRS) have raised issues with respect to numerous provisions in State law that allow for optional elections and that

allow those elections to occur at times other than at the commencement of employment. Generally, the IRS rulings address impermissible cash or deferred arrangements and limit the circumstances under which one-time, irrevocable membership elections are permissible. Based on its review of these rulings, and on the advice of tax counsel, the SRPS Board of Trustees asked JCP to sponsor legislation to make changes to several provisions in order to ensure the system's tax-exempt status. JCP agreed to sponsor the legislation.

Additional Information

Prior Introductions: None.

Cross File: HB 815 (Delegate B. Barnes)(Chair, Joint Committee on Pensions) - Appropriations.

Information Source(s): Maryland Association of Counties; State Retirement Agency; Department of Legislative Services

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