SB 353

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 353 (Senator Guzzone)(Chair, Joint Committee on Pensions)
Budget and Taxation Appropriations

Optional Retirement Program - Annuity Contracts - Employee Rights

This bill clarifies that, in accordance with a specified provision of the federal Internal Revenue Code, the rights of participating employees in the Optional Retirement Program (ORP) to benefits under annuity contracts purchased under the program are fully vested and not subject to forfeit. In the event that a designated company is eliminated from ORP or the type of annuity contract is withdrawn, the bill authorizes the Board of Trustees of the State Retirement and Pension System (SRPS), to the extent allowed under an existing annuity contract, to direct the transfer of existing balances of participating employees to a new annuity contract. The board must give participating employees the option to select an annuity contract with a designated company for existing balances subject to transfer. If a participating employee does not make a selection within a specified period, the employee is deemed to have elected an annuity contract and a designated company specified by the board for the transfer of existing balances.

The bill takes effect July 1, 2017, and does not apply to any annuity contract with a company that was eliminated from participation in ORP before the bill's effective date.

Fiscal Summary

State Effect: None. The bill is technical and procedural in nature and does not directly affect governmental finances.

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 SRPS:

- University System of Maryland (USM);
- Morgan State University (MSU);
- St. 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 MHEC;
- professional employees of a community college;
- employees of USM who are exempt from the federal Fair Labor Standards Act (FLSA);
- executive or professional administrative employees of MSU; or
- employees of SMCM who are exempt from FLSA.

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 under State law. 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, which are issued to and become the property of the participating employees.

ORP is authorized under § 403(b) of the federal Internal Revenue Code, 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.

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.

The SRPS board must review the performance, form, and contents of annuity contracts offered under the program every three years. After a review, the board may eliminate a designated company from participation in the program or withdraw approval for a type of annuity contract offered by a designated company. If a designated company is eliminated from the program or approval for a type of annuity contract is withdrawn, the board must give affected participating employees an opportunity to select an annuity contract for future contributions under the program. If a participating employee does not make a change within a period specified by the board, the participating employee is deemed to have elected for future contributions an annuity contract and a designated company specified by the board. Current law does not address the transfer of existing balances in an annuity contract.

Background: The SRPS board employs a consultant to advise it on matters related to the selection of vendors and annuity contracts under ORP. In its most recent review of plan options, the consultant recommended moving from TIAA's current individual annuity contract structure to a group annuity product known as the Retirement Choice contract. To enable this transfer to occur, the board requested that the Joint Committee on Pensions (JCP) sponsor legislation that authorizes the board to enter into group annuity contracts while still giving rights to participating employees that are comparable to those they have under individual annuity contracts. JCP agreed to sponsor the legislation.

Additional Information

Prior Introductions: None.

Cross File: HB 304 (Delegate B. Barnes)(Chair, Joint Committee on Pensions) - Appropriations.

Information Source(s): Baltimore City Community College; St. Mary's College of Maryland; Morgan State University; State Retirement Agency; Department of Legislative Services

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