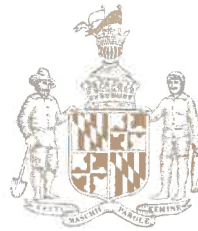


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April 25, 2019

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401

***RE: House Bill 62/Senate Bill 119 – Employees’ and Teachers’ Pension Systems – Benefits; and House Bill 1379 – Optional Retirement Program – Membership***

Dear Governor Hogan:

We hereby approve House Bill 62 and its identical cross-file, Senate Bill 119, for constitutionality and legal sufficiency. We also approve House Bill 1379 for constitutionality and legal sufficiency. Because these bills appear to provide a benefit to specific individuals, we have analyzed the bills under Article III, §33 of the Maryland Constitution, which prohibits special laws. For the reasons that follow, we conclude that the bills do not violate this provision.

House Bill 62 and Senate Bill 119 were introduced to correct an inadvertent drafting error in State Personnel and Pensions Article, § 23-307 regarding purchases of service credit. The bills were subsequently amended to allow individuals who have attained retirement age to retire from their full-time employment, notwithstanding that each individual also holds a separate paid elected office. Thus, the bills permit these individuals to begin ordinary retirement from their full-time positions without having to step down from elected office.

Along the same lines, House Bill 1379 also appears to address an individual situation. The individual was a member of the Optional Retirement Program (“ORP”). State law offers certain individuals a “one-time irrevocable election” to join the ORP instead of the Employees’ or Teachers’ systems. Once a member of the ORP, the individual must remain in the ORP whenever employed in an ORP-eligible position. An individual, however, who was a member of the ORP for a short time period decades ago,

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and then becomes a member of the Employees' Pension System ("EPS") in a position that was not ORP-eligible, and who subsequently started working in an ORP-eligible position, would be harmed if required to enroll in the ORP at that point because of many years of vested service in the EPS. For this reason and to avoid federal tax law concerns, the bill "requires" that an individual in this situation be enrolled in the EPS instead of the ORP, thus avoiding a new election or "impermissible cash or deferred arrangement."

The Court of Appeals has recognized the propriety of individual grants of retirement benefits for employees who do not meet the requirements of the general law. *Police Pension Cases*, 131 Md. 315 (1917). Although that case involved statutes passed to provide certain retirement benefits to named individuals, the Court found there was no general law to cover the specific circumstances of the case and the statutes "would seem peculiarly meritorious and just," and, therefore, they did not violate Article III, Section 33.

Based upon this case and because these bills are intended to serve a particular need and promote some public interest for which the general laws may have been inadequate, and because similar types of pension bills have been determined to be constitutional in the past, we do not believe a finding of unconstitutionality is required.

Sincerely,



Brian E. Frosh  
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith  
Chris Shank  
Victoria L. Gruber