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April 16, 2020

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

RE: Senate Bill 339 and Senate Bill 960

Dear Governor Hogan:

We have reviewed and hereby approve Senate Bill 339, “State Employee and Retiree Health and Welfare Benefits Program - Participation” and Senate Bill 960, “State Retirement and Pension System - Membership and Benefits.” Both bills address situations of State employees or retirees who have been in more than one system within the State Retirement and Pension System or have been in the same system but under different employers. Because these bills appear to provide benefits 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.

Senate Bill 339 applies to a person who was a member of the Optional Retirement Program (“ORP”) while employed by Anne Arundel Community College from August 2002 to November 2013, then accepted employment at the University of Maryland, Baltimore (“UMB”) starting in November 2013. The employee now has 16 or more years of service in the ORP. At the time of the transfer to UMB, the employee asked the UMB human resources office whether service at Anne Arundel County Community College would be counted when determining eligibility for benefits in the State Employee and Retiree Health and Welfare Benefits Program. The employee was incorrectly told that it would and made a decision to accept the new position on that basis. Unfortunately, only service with a State institution of higher education counts toward eligibility for the State health insurance plan. In addition, to qualify with 16 years of service rather than 25 years the employee needed to have worked for UMB or another State institution of higher

education prior to July 1, 2011 because the law changed at that point. UMB does not deny that the employee was given incorrect advice. To address this problem, the bill requires that the calculation of service include the employee's time at Anne Arundel Community College and that the employee be considered as having begun service on or before June 30, 2011.

Senate Bill 960 addresses the retirement of three individuals with completely separate issues. As introduced, the bill addressed the situation of an Assistant Attorney General ("AAG") who was initially assigned to the Department of Transportation and enrolled in the Employees' Pension System ("EPS"). The AAG was later assigned to work on higher education issues and was transferred into the personnel system of the University System of Maryland and elected to participate in the ORP. Subsequently, while continuing to work on higher education issues the AAG was transferred to the State Personnel Management System and resumed participation in the EPS. The AAG then withdrew their accumulated contributions to the ORP. These changes do not reflect actual changes in employment: the individual was an AAG the entire time, but there were changes in the source of payment between the Office of the Attorney General and the clients. Section 2 of the bill provides that the AAG "may not participate in the Optional Retirement Program on or after July 1, 2020," Section 2(c), thus permitting a return to EPS.

Section 3 of Senate Bill 960 was added by amendment in the Senate. It covers an individual who started working for the Carroll County Community College and elected to participate in the ORP in 2007. The employee then worked for the Maryland Department of Health and enrolled in EPS as a condition of employment and later transferred to the Department of Human Services, remaining in EPS. Subsequently, the individual began working for the Higher Education Commission in late 2019 and was reenrolled in the ORP as required by State Personnel and Pensions Article ("SP"), § 30-307(b)(1). The bill requires the individual to "resume membership in the [EPS] on June 1, 2020," which has the effect of permitting the employee to leave ORP for EPS on June 1, 2020.

Finally, Section 4 of the bill was added by amendment in the House. It covers an individual who was a public school teacher and a member of the Teachers' Pension System ("TPS") and retired from TPS July 1 of 2019. Unknown to the State Retirement Agency, the individual was a member of EPS at the time of her retirement as she had been elected town commissioner in 2015. This second position should have prevented her retirement under SP § 23-407(d). This issue has come up in other cases, *see* Bill Review Letter on House Bill 62 and Senate Bill 119 of 2019, but general legislation is not currently advisable until the IRS issues final normal retirement age regulations. Section 4 exempts the individual from the 45 day break requirement of SP § 23-407(d), requires the employee to

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cease membership in the EPS as of June 30, 2019, and provides that once the employee is no longer a town commissioner the employee is entitled to a return of accumulated contributions or any other benefit to which the employee is entitled on the basis of membership in EPS as of June 30, 2019 and a return of any accumulated contributions made by the individual to EPS from July 1, 2019 through May 31, 2020.

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,

A handwritten signature in blue ink that reads "Brian E. Frosh". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian E. Frosh
Attorney General

BEF/KMR/kd

cc: The Honorable John C. Wobensmith
Keiffer J. Mitchell, Jr.
Victoria L. Gruber