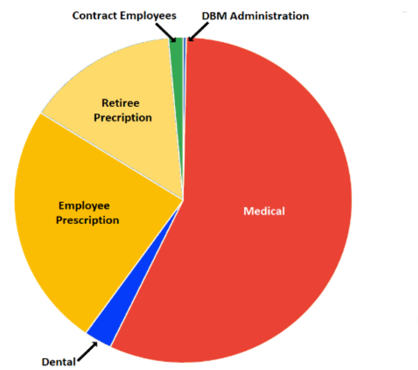
HB670: Favorable | **House Appropriations Committee**
Written Testimony of Peta N. Richkus | **March 12, 2024**

Dear Chairman Barnes, Vice Chair Chang, and Members of the Committee,

Viable options DO exist to both enhance the State's standing with rating agencies **and** continue retirees' promised prescription coverage.

I ask for a Favorable Report on HB670. And on any actions that would allow for an **examination of the many fallacies** and information gaps that have developed over the years about the numbers of retirees affected, the costs, and their impact on the State's standing with the bond rating agencies.

As this pie chart indicates - the State's oldest retirees cannot possibly be responsible for the entirety of the State's OPEB liability. Retiree prescriptions are less than 15% of the health insurance pie: the sliver that is attributable to Medicare-eligible retirees is even less. This sliver is not a threat to Maryland's AAA bond rating.

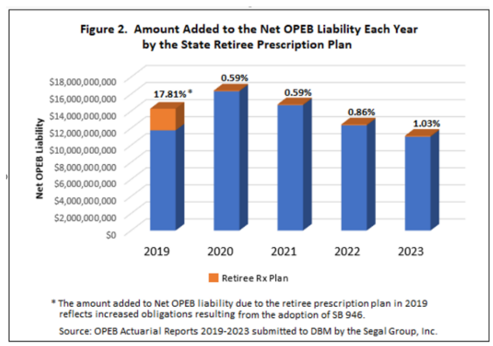


Employee and Retiree Health Insurance Costs (FY24 Working)

Figure 1

Fact - rating agencies have never downgraded a state solely based on unfunded OPEB liability.

Fact – conflating the State's OPEB Trust Fund (officially, the Other Post-Employment Health Benefits Trust/PHBT Fund) with the Pension Fund (State Retirement & Pension System/SRPS Trust Fund) is deceptive and seemingly intended to threaten the retirement system's 420,343 members into silent acquiescence with the taking of their promised benefit. Committee members know the difference:
SRPS - $66,019.0 million in assets (as of January 31, 2024).
OPEB - $ 491.8 million in assets (as of December 31, 2023). In other words, **the OPEB Trust is 0.7% the size of the SRPS Trust.**



Fact – it's not possible to create an OPEB pie chart because the numbers are not available.

Fact – the number of impacted retirees reported in 2024 has varied from 53,000 Medicare-eligible retirees to 54,291 retirees and dependents to 56,846 including previously-uncounted retirees receiving TIAA pension benefits but receiving state prescription drug coverage.

Fact – Per DBM's own OPEB actuarial reports: Over the last four years, the addition to Net OPEB Liability due to the State retiree prescription plan was **1% or less** of the annual Net OPEB liability.

Fact – No cost estimates or start dates have been given to implement DBM's plan for "transitioning" retirees to Part D, including the two as-yet-unawarded DBM contracts for ongoing services.

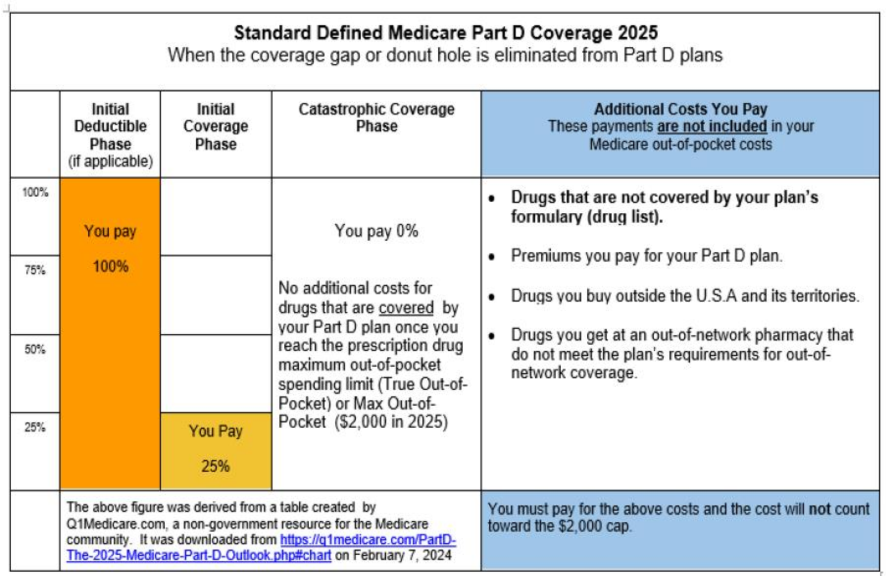
The DLS analysis of DBM's FY25 proposed budget includes the actuary's estimate that restoring full State-funded prescription drug coverage for Medicare-eligible retirees would increase the liability by $8.9 billion, almost doubling the current OPEB liability. **How can this make sense?** The bases, assumptions and calculations have never been analyzed. As DLS notes, "Any estimate of what the annual cost would be to pre-fund retiree health care costs is highly sensitive to the assumptions about how the plan would be designed. Decisions about the amortization period, the discount rate, and funding goals would have large effects on the contribution amount." **These should be examined.**

The State's "**pension** funding discipline"- or lack thereof - is judged the greater threat to Maryland's bond rating.

Specifically:

- **Fitch**, March 2023 Ratings: *Maryland's debt and net pension liabilities are elevated for a state but moderate relative to its resource base. Pensions are the more significant burden....*
- ***Moody's***, March 2023 Credit Opinion: *Due to its plans' reliance on volatile investments to meet its return targets, the state's pension asset shock indicator (PASI)... was 3.6%, higher than any other state's except Maine (Aa2, stable).*
- **S&P**, March 2023 RatingsDirect: *We view the state's pension funding discipline as adequate... but not enough to meet our minimum funding progress metric.... The state's OPEB liability is a source of credit pressure because the liability is high compared with that of peers and the state has made minimal progress in funding its OPEB obligations.*
- **Pew Charitable Trusts:** *most states continue to face steeper claims on their future revenue from* ***unfunded pension obligations*** *than from* ***either*** *unfunded retiree health care promises or debt.*

In 2004 (after Medicare Part D was enacted as part of the Medicare Modernization Act of 2003), the General Assembly unanimously passed Chapter 296 (SB614), **"requiring the State Employee and Retiree Health and Welfare Benefits Program to include a prescription drug benefit plan for State retirees notwithstanding any changes in federal law permitting a state to discontinue prescription drug benefit plans for state retirees."** This fact has been lost in the fog of history as few in the General Assembly today were 'in the room where it happened.'



The claim that Medicare Part D is 'comparable' to the state plan (which is Medicare Part D with the addition of a wrap-around enhancement) is also false. Tens of thousands of retirees will incur **thousands of dollars of additional costs** that will NOT apply to any cap and will NOT be covered when Medicare-eligible retirees are moved to a Part D-only plan.

A raincoat is not the same as a winter overcoat. A Part D plan that covers two different proton-pump inhibitors is not the same as the State plan that covers 15 different proton-pump inhibitors. As those who suffer from gastroesophageal reflux disease (GERD) or gastritis can attest.

Policy statements from a wide spectrum of experts underscore the injustice of Maryland's retroactively stripping its oldest retirees of their promised prescription drug coverage:

- **GASB (Government Accounting Standards Board),** the governing body that sets the accounting standards: "…even when OPEB is not vested or guaranteed, or even if OPEB requires periodic authorization… The employer has a constructive, if not legal, obligation for promised benefits to the extent that the benefits are attributable to services already received and it is probable that conditions for an employee's eligibility will be met."
  GASB's website currently states, "In some circumstances, OPEB is not a legal or contractual obligation of the government. Consequently, the benefits, or an employee's eligibility to receive them, could change in the future. *Regardless*, the GASB believes that the government has an obligation to pay OPEB *based on the level of retirement benefits promised to an employee in exchange for his or her services*." (Italics added.)

- **ALEC (American Legislative Exchange Council),** the conservative corporate lobbying group: *The "constructive liability" to pay our promised non-pension benefits, although they may not be bound by strict legal requirements, represents an obligation for the state to pay promised benefits.*

- ***The Daily Record* Editorial Advisory Board**, comprised of respected leaders in the Maryland legal community, including two retired judges: *Maryland state retirees deserve prescription drug benefit*

The threat to the State's AAA bond rating related to OPEB is its decades-long failure to fund its OPEB trust fund. Despite much expressed concern about the OPEB liability burden, the State effectively failed to do anything about it. This is not the fault of state retirees. Maryland failed to fund the OPEB Trust Fund for over a decade, even though pre-funding of the Trust Fund is what GASB guidelines recommend.

Now, **with last year's contribution of approximately $25 million to the OPEB Trust** beyond the pay-as-you-go cost of $706,945,934, Maryland has taken a first step forward, as so many have recommended. The State can build on that.

Best Practices and diverse policy experts have outlined for the State, directly and in public policy guidance documents, the benefits of beginning to build up the OPEB Trust Fund.

- As observed by **DLS** in its 2023 review of DBM's proposed FY24 budget, "Pre-funding an OPEB fund would reduce the liability significantly due to the long-term investment gains and would help maintain the State's high ratings from credit agencies."
- As noted in its analysis of the proposed 2024 DBM budget, DLS reported that members of the **Spending Affordability Commission** had expressed interest in the potential for the State to begin pre-funding retiree health care.
- Establishing an OPEB trust allows the State to invest the assets which will 1. lower OPEB costs over time, 2. enhance the credit rating, 3. enhance generational taxpayer equity, and 4. **is considered a GFOA (Government Finance Officers Association) Best Practice.**
- Currently, the State pays for retiree health care on a pay-as-you-go basis. **It could continue to do so.**

Any plan toward funding the OPEB trust would be seen as a plus by the rating agencies.

Most governments continue to fund their retiree health benefits on a "pay-as-you-go" basis even as they assess strategies to deal with escalating costs. Change the assumptions and stretch out the start and schedule for funding (as has been done more than once for funding the State's SRPS Pension Trust Fund), and what had appeared impossible and unaffordable could be feasible.

Many Committee members and your fellow-state representatives have reported receiving numerous calls and emails from your constituents on the subject of retirees' prescription drug benefits. That's because 74.3% of State retirees live in Maryland and live in your districts. They spend their $3.5B in annual pension benefits in your districts. And they and their concerned friends and family members vote in your districts.

M = millions

County/City	Number of Retirees	Total Pension Dollars
Allegany	3,524	$89.0M
Anne Arundel	13,498	$389.7M
Baltimore City	11,558	$298.0M
Baltimore County	22,032	$663.8M
Calvert	2,447	$73.5M
Caroline	1,129	$29.2M
Carroll	5,413	$157.1M
Cecil	1,972	$50.9M
Charles	2,355	$65.8M
Dorchester	1,491	$37.4M
Frederick	5,295	$159.6M
Garrett	1,305	$33.5M

County/City	Number of Retirees	Total Pension Dollars
Harford	7,364	$213.8M
Howard	6,797	$222.9M
Kent	771	$21.0M
Montgomery	9,562	$334.2M
Prince George's	10,909	$286.0M
Queen Anne's	2,034	$60.3M
Saint Mary's	2,221	$58.4M
Somerset	1,254	$30.0M
Talbot	1,472	$40.5M
Washington	4,716	$123.4M
Wicomico	3,558	$96.6M
Worcester	2,253	$60.1M

Number of Retirees by county, State Retirement Agency, *SRPS By The Numbers*, January 2024.

Retirees do not understand why they – when they and their contributions are claimed to be "valuable" - have been assigned zero priority without examining alternatives to off-loading them onto Medicare Part D and without affording them meaningful input into the State's decisions that will be life-altering for so many.

Why, for example, hasn't the State even considered an upward adjustment in the premiums that retirees pay for the State plan. That would certainly contribute to easing the State's fiscal issues.

For these many reasons, I urge a favorable report on HB670.

Respectfully submitted,

Peta N. Richkus

Secretary, Maryland Department of General Services (1999 - 2003)
Port Commissioner, Maryland Port Administration (2008 - 2014)
Intergovernmental Policy Advisory Committee on Trade, US Trade Representative's Office (2010 - 2014)