

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 245
Budget and Taxation

(Senator Mooney)

Appropriations

**State Retirement and Pension System - Military Service Credit - Maryland
National Guard Members**

This pension bill specifies that a member of the State Retirement and Pension System (SRPS) who is a member of the Maryland National Guard who has been activated under Title 10 of the U.S. Code may receive four months of additional military service credit (in addition to the 12 months of service credit provided under current law) for each full year of such active service, up to a maximum of 36 months of additional service credit.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: The amount of additional military service credit, and corresponding increase in State pension liabilities, cannot be reliably estimated at this time. Factoring in the total cost of granting service credit for inactive duty, the number of members currently called to active duty, and the amount of time they are likely to be on active duty in relation to their total guard service, it is likely that pension costs will increase by a minimal amount versus current law.

Local Effect: Minimal increase in pension contributions for local governments that participate in the State Retirement and Pension System.

Small Business Effect: None.

Analysis

Current Law: Under Section 38-103 of the State Personnel and Pensions Article, members of a State or local pension system in Maryland may receive up to five years of military service credit for service that interrupts employment. A recent opinion by the Attorney General concludes that this provision also applies to members of the National Guard or a reserve component of the U.S. armed forces who are also State or local government employees: (1) if the member's unit is called into active duty; or (2) during the member's annual two-week training.

Section 38-104 of the same Article provides additional service credit to SRPS members for prior military service not covered by Section 38-108. In addition, Chapter 699 of 2000 amended that section to allow members of SRPS who are also Maryland National Guard members to receive four months of military service credit for each 12 months of service in the Maryland National Guard. Thus, they may earn 16 months of service in a year – 12 months of service credits for their normal State employment plus 4 months of military service for their year of service in the guard.

There is some disagreement about the interpretation of current law when a National Guard member is called to active duty by the President of the United States (“federalized”) under Title 10 of the U.S. Code. In response to last year's SB 497 (see discussion below), the Military Department advised that members of the National Guard who were called to active duty were eligible for the extra service credit in SRPS under Chapter 699 of 2000. An assistant attorney general for the State Retirement Agency, however, has subsequently advised that all days during the period of the call-up are considered active duty in the U.S. military under Section 38-103, and hence that time cannot be used to claim the additional four months of military service credit for military service in the National Guard under Section 38-104.

Background: Since the attacks of September 11, 2001, over 2,000 of Maryland's National Guard members have been called up for active (federalized) duty. The Department of Budget and Management advises that 245 State employees who participate in the guard have been called up for active duty. An unknown number of guard members who are also employees of participating governmental units have also been called up to active duty.

SB 497 of 2002 attempted to correct the anomaly whereby a guard member on inactive duty earns 16 months of service credit for each year of State employment but a guard on active federalized duty earns 12 months of service credit for a year of interrupted State employment. SB 497 was passed by the General Assembly but vetoed by the Governor, who argued that the bill was not properly drafted to accomplish the sponsor's intent

because it amended only Section 38-104 and not also Section 38-103. The bill's language has since been amended to clarify any misunderstanding.

State Expenditures: The fiscal note for Chapter 699 of 2000 stated that State pension liabilities would increase by approximately \$5.6 million, with a first-year cost beginning in fiscal 2002 of \$384,200 and increasing 5% per year thereafter. As part of the estimate for that bill, it was assumed that all Maryland National Guard members who participated in SRPS would eventually receive two years of additional service credit (reflecting an assumption that some guard members would have already transferred other military service credit to SRPS). No distinction was made at that time between active and inactive duty.

Because some guard members are now on active duty, those guard members may not be eligible under current law to receive the additional credit provided under Chapter 699, depending on the final interpretation of current law. This reduction in available service credit would be reflected as actuarial gains to the pension system. Presumably, however, they will not stay on active duty indefinitely. Once they return to inactive duty, they will be eligible to accrue the extra service again. The amount of service that will ultimately be foregone under current law – and granted under this bill – cannot be reliably ascertained at this time. Based on the total fiscal estimate of Chapter 699, however, it is likely that the value of any additional pension service credit granted under this bill would be minimal.

Additional Information

Prior Introductions: See discussion above of SB 497 of 2002.

Cross File: None.

Information Source(s): Department of Budget and Management, Military Department, State Retirement Agency, Milliman USA, Department of Legislative Services

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