

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

Senate Bill 514

(Senators Klausmeier and Hogan)

Budget and Taxation

Appropriations

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**Optional Retirement Program - Eligibility**

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This pension bill alters membership in the Optional Retirement Program (ORP) for employees of the University System of Maryland and Morgan State University. Instead of including those individuals in positions other than those designated as “classified employees,” membership would be provided to those employees who are in: (1) a position designated as “exempt” under a policy adopted by the University System of Maryland Board of Regents; or (2) a position designated as professional or administrative by the Board of Regents of Morgan State University.

The bill also provides that individuals who participated in ORP as of August 22, 2004 and who are in a position that is no longer an eligible position may continue to participate in ORP provided they remain eligible for membership in a State retirement or pension system and are employed by an employing institution. The bill applies retroactively to employees who, as of August 23, 2004, remain eligible for ORP under the bill.

The bill is an emergency measure and is effective from the date it is enacted.

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**Fiscal Summary**

**State Effect:** No immediate fiscal impact as the bill maintains current practice. Future potential cost in ORP contributions is offset by future State pension savings associated with not adding these positions to the State pension system.

**Local Effect:** None.

**Small Business Effect:** None.

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## **Analysis**

**Current Law:** In lieu of membership in the State Retirement and Pension System, certain higher education employees are permitted to participate in ORP. ORP is a defined contribution program established to provide portability of benefits to employees of the University System of Maryland, Morgan State University, St. Mary's College, community colleges, and the Maryland Higher Education Commission (defined as employing institutions).

To be eligible ORP employees, individuals must be eligible for membership in a State retirement or pension system and be:

- members of the faculty of an employing institution;
- professional employees of a community college established under Title 16 of the Education Article;
- employees of the University System of Maryland who are not in a position designated to be treated in the same manner as classified service employees under § 12-111 of the Education Article;
- employees of Morgan State University who are not subject to the provisions of Division I of the State Personnel and Pensions Article; or
- employees of St. Mary's College of Maryland who are in a position determined by the board of trustees of the college to be professional or faculty positions.

If eligible employees are transferred or promoted to an ineligible position with a participating employer or are transferred or promoted to an ineligible employer, membership in ORP ends. Those members then would be required to enroll in the State Retirement and Pension System.

On behalf of ORP members, the State contributes 7.25% of the member's pay into the member's ORP account. There is no mandatory member contribution.

In addition, the four authorized ORP vendors, as well as the Teachers' and State Employees' Supplemental Retirement Plans, are authorized to offer supplemental accounts to ORP members and other non-ORP eligible employees at the institutions. These supplemental accounts may follow the terms of three different provisions of the Internal Revenue Code: § 403(b) (for educational employees), § 457 (for public employees), and § 401(k) (for Maryland State employees under a specific private letter

ruling from the Internal Revenue Service). Chapter 334 of 2002 explicitly permitted the institutions to authorize the four ORP vendors to offer § 457 and § 401(k) plans to their employees. Previously, ORP vendors were only explicitly authorized to offer § 403(b) plans.

**Background:** In August 2004, pursuant to regulations issued by the U.S. Department of Labor under the Fair Labor Standards Act, the Board of Regents of the University System of Maryland was required to convert approximately 30 positions from “exempt” status to nonexempt status. Of these 30 positions, approximately 15 of the individuals were enrolled in ORP. Exempt positions are managerial, administrative, and professional in nature. They are salaried positions that are not subject to the overtime provisions of the Fair Labor Standards Act.

**State Fiscal Effect:** The bill affects 15 individuals who were converted to nonexempt positions and may remain in ORP. The immediate fiscal impact is none, as the bill maintains current practice and costs in the University System of Maryland.

Using current contribution rates, converting a position from the 7.25% employer contribution rate for ORP to the 5.76% employer contribution rate for the Employees’ Pension System produces a general fund savings. Therefore, allowing these positions to remain in ORP will result in a cost, as the affected individuals will remain under a higher (7.25%) contribution rate plan. However, by not moving these individuals into the Employees’ Pension System, a savings in future liability will result.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1285 (Delegate Madaleno) – Appropriations.

**Information Source(s):** Milliman USA, Morgan State University, University System of Maryland, Maryland State Retirement Agency, Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2005  
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