

SENATE BILL 728

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CF 8lr1497

By: **Senator Madaleno**

Introduced and read first time: February 1, 2008

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Voluntary Employee Accounts Program**

3 FOR the purpose of establishing the Maryland Voluntary Employee Accounts
4 Program; requiring the State Board of Trustees of the Maryland Teachers and
5 State Employees Supplemental Retirement Plans to implement, maintain, and
6 administer the Program and certain retirement plans for certain employees;
7 requiring the Board of Trustees to submit certain information to certain
8 employers and employees; authorizing the Board of Trustees to employ certain
9 individuals; providing that certain individuals employed by the Board of
10 Trustees are subject to certain provisions of the State Personnel and Pensions
11 Article; providing for the method of payment of certain expenses incurred by the
12 Board of Trustees as a result of administering the Program; requiring the
13 Governor to include certain funds in the State budget; authorizing certain
14 assets to be deposited and invested in a certain manner; authorizing the Board
15 of Trustees to establish certain retirement plans; providing for participation in a
16 certain retirement plan; requiring the Board of Trustees to obtain certain
17 approvals, rulings, opinions, and confirmations from certain federal authorities
18 or agencies; making certain provisions of this Act contingent on receipt of
19 certain approvals, rulings, opinions, and confirmations from certain federal
20 authorities or agencies; defining certain terms; providing for the effective date
21 of certain provisions of this Act; and generally relating to the Maryland
22 Voluntary Employee Accounts Program.

23 BY adding to

24 Article – State Personnel and Pensions

25 Section 41–101 through 41–401 to be under the new title “Title 41. Maryland
26 Voluntary Employee Accounts Program”

27 Annotated Code of Maryland

28 (2004 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Personnel and Pensions**

4 **TITLE 41. MARYLAND VOLUNTARY EMPLOYEE ACCOUNTS PROGRAM.**

5 **SUBTITLE 1. DEFINITIONS.**

6 **41-101.**

7 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (B) “BOARD” MEANS THE STATE BOARD OF TRUSTEES OF THE
10 MARYLAND TEACHERS AND STATE EMPLOYEES SUPPLEMENTAL RETIREMENT
11 PLANS UNDER TITLE 35 OF THIS ARTICLE.

12 (C) “ERISA” MEANS THE FEDERAL EMPLOYEE RETIREMENT INCOME
13 SECURITY ACT OF 1974.

14 (D) “IRA” MEANS AN INDIVIDUAL RETIREMENT ACCOUNT UNDER § 408
15 OR 408A OF THE INTERNAL REVENUE CODE.

16 (E) “MASTER OR PROTOTYPE PLANS” MEANS RETIREMENT PLANS
17 UNDER § 401(A) OR § 401(K) OF THE INTERNAL REVENUE CODE AND
18 PREAPPROVED BY THE INTERNAL REVENUE SERVICE ADMINISTRATIVE
19 PROGRAM REFERRED TO AS THE MASTER AND PROTOTYPE PROGRAM.

20 (F) (1) “PARTICIPATING EMPLOYER” MEANS A PERSON THAT:

21 (I) IS ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION,
22 TRADE, OR OTHER ENTERPRISE IN THE STATE; AND

23 (II) MEETS THE REQUIREMENTS TO ESTABLISH OR
24 PARTICIPATE IN:

25 1. A PLAN QUALIFIED UNDER § 401(A) OF THE
26 INTERNAL REVENUE CODE, INCLUDING A PLAN THAT CONTAINS A CASH OR
27 DEFERRED ARRANGEMENT UNDER § 401(K) OF THE INTERNAL REVENUE CODE;

28 2. A SAVINGS INCENTIVE MATCH PLAN UNDER §
29 408(P) OF THE INTERNAL REVENUE CODE; OR

1 **3. A PAYROLL DEDUCTION IRA.**

2 **(2) “PARTICIPATING EMPLOYER” DOES NOT INCLUDE:**

3 **(I) THE STATE AND ITS UNITS;**

4 **(II) A COUNTY AND ITS UNITS;**

5 **(III) A MUNICIPAL CORPORATION AND ITS UNITS;**

6 **(IV) ANY EMPLOYER THAT FAILS TO SATISFY ANY CRITERIA**
7 **BASED ON THE SIZE OF THE EMPLOYER THAT MAY BE SPECIFIED IN WRITING ON**
8 **A UNIFORM BASIS FROM TIME TO TIME BY THE BOARD; OR**

9 **(V) IF, AND TO THE EXTENT SPECIFIED IN WRITING BY THE**
10 **BOARD, ANY EMPLOYER THAT MAINTAINS OR WITHIN A SPECIFIED PERIOD IN**
11 **THE PAST HAS MAINTAINED A RETIREMENT PLAN FOR ITS EMPLOYEES.**

12 **(G) “PROGRAM” MEANS THE MARYLAND VOLUNTARY EMPLOYEE**
13 **ACCOUNTS PROGRAM ESTABLISHED UNDER THIS TITLE OFFERING**
14 **RETIREMENT PLANS TO PARTICIPATING EMPLOYERS AND, IF THE BOARD**
15 **DETERMINES, IRAS TO THE RESIDENTS OF MARYLAND.**

16 **(H) “RETIREMENT PLAN” MEANS A SALARY REDUCTION SAVINGS PLAN**
17 **OR ANY OTHER PLAN OR ARRANGEMENTS OFFERED UNDER THE PROGRAM AND**
18 **AUTHORIZED BY THIS TITLE IN ACCORDANCE WITH §§ 41-201(B) AND 41-401(A)**
19 **OF THIS TITLE.**

20 **SUBTITLE 2. ESTABLISHMENT; POWERS AND DUTIES OF BOARD.**

21 **41-201.**

22 **(A) THERE IS A MARYLAND VOLUNTARY EMPLOYEE ACCOUNTS**
23 **PROGRAM.**

24 **(B) THE PROGRAM SHALL INCLUDE, AS DETERMINED BY THE BOARD**
25 **ONE OR MORE OF THE COMPONENTS PROVIDED UNDER § 41-401(A)(1)**
26 **THROUGH (5) OF THIS TITLE.**

27 **(C) THE BOARD, THROUGH REQUESTS FOR PROPOSALS AND**
28 **CONTRACTUAL ARRANGEMENTS WITH PLAN, ADMINISTRATIVE, SERVICE, AND**
29 **FINANCIAL PROVIDERS, SHALL:**

1 (1) IMPLEMENT, MAINTAIN, AND ADMINISTER THE PROGRAM;
2 AND

3 (2) PROMOTE EMPLOYER SPONSORSHIP OF SIMPLE, LOW-COST
4 RETIREMENT PLANS REFLECTING BEST PRACTICES IN DESIGN, COVERAGE,
5 PORTABILITY, COLLECTIVE INVESTMENT, AND COMPLIANCE.

6 (D) IN A CASE OF DOUBT, THE BOARD SHALL DETERMINE THE
7 ELIGIBILITY OF AN EMPLOYER, EMPLOYEE, OR OTHER INDIVIDUAL TO
8 PARTICIPATE IN THE PROGRAM.

9 **41-202.**

10 (A) (1) IN ACCORDANCE WITH THE STATE BUDGET, THE BOARD MAY
11 EMPLOY A STAFF TO IMPLEMENT THE PROGRAM.

12 (2) THE GOVERNOR SHALL INCLUDE IN THE STATE BUDGET THE
13 AMOUNT OF MONEY NECESSARY TO ESTABLISH THE PROGRAM AND RELATED
14 ARRANGEMENTS AS APPROVED BY THE BOARD, WHICH MAY BE CHARGED
15 AGAINST PLAN OR ACCOUNT ASSETS ONLY TO THE EXTENT PERMITTED UNDER
16 FEDERAL LAW.

17 (3) THE BOARD MAY CONTRACT WITH PRIVATE FINANCIAL
18 INSTITUTIONS FOR CUSTODIAL OR TRUST ARRANGEMENTS FOR PLANS OR IRAS,
19 AND MAY COLLABORATE OR COOPERATE WITH BUSINESS ORGANIZATIONS OR
20 OTHER ENTITIES TO THE EXTENT NECESSARY OR DESIRABLE TO MAXIMIZE
21 OUTREACH TO EMPLOYERS AND INDIVIDUALS AND FOR THE EFFICIENT
22 IMPLEMENTATION OF THE PROGRAM.

23 (B) THE BOARD MAY HIRE OR ENGAGE CONSULTANTS,
24 ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECESSARY TO HELP:

25 (1) IMPLEMENT, MAINTAIN, AND ADMINISTER THE PROGRAM;
26 AND

27 (2) PARTICIPATING EMPLOYERS AND INDIVIDUALS ESTABLISH,
28 MAINTAIN, AND ADMINISTER THE RETIREMENT PLANS, WHICH MAY BE MASTER
29 OR PROTOTYPE PLANS.

30 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
31 SUBSECTION OR OTHERWISE BY LAW, EMPLOYEES OF THE BOARD HIRED TO
32 IMPLEMENT THE PROGRAM UNDER SUBSECTION (A) OF THIS SECTION ARE
33 SUBJECT TO THE PROVISIONS OF DIVISION I OF THIS ARTICLE THAT GOVERN
34 NONTEMPORARY EMPLOYEES.

1 **(2) EMPLOYEES OF THE BOARD WHOSE LABOR IS**
2 **PREDOMINATELY INTELLECTUAL AND WHO HOLD POSITIONS THAT THE BOARD**
3 **DESIGNATES AS PROFESSIONAL OR TECHNICAL POSITIONS INVOLVING**
4 **SPECIALIZED SKILL, EDUCATION, AND KNOWLEDGE ARE IN THE EXECUTIVE**
5 **SERVICE OR THE MANAGEMENT SERVICE OR ARE SPECIAL APPOINTMENTS IN**
6 **THE SKILLED SERVICE OR THE PROFESSIONAL SERVICE IN THE STATE**
7 **PERSONNEL MANAGEMENT SYSTEM.**

8 **(D) (1) EXCEPT FOR EXPENDITURES THAT ARE APPROVED BY THE**
9 **BOARD AND BUDGETED UNDER SUBSECTION (A)(2) OF THIS SECTION, ALL**
10 **EXPENSES, INCLUDING EMPLOYEE COSTS, INCURRED TO IMPLEMENT,**
11 **MAINTAIN, AND ADMINISTER THE PROGRAM AND THE RETIREMENT PLANS**
12 **SHALL BE PAID FROM:**

13 **(I) THE CONTRIBUTIONS TO THE PROGRAM;**

14 **(II) THE INCOME OR ASSETS OF THE PROGRAM; OR**

15 **(III) FEES OR CHARGES IMPOSED ON THE RETIREMENT**
16 **PLANS OR PARTICIPANTS.**

17 **(2) EACH RETIREMENT PLAN SHALL PAY A PROPORTIONATE**
18 **SHARE OF THE EXPENSES SPECIFIED IN PARAGRAPH (1) THIS SUBSECTION.**

19 **(3) ADMINISTRATIVE EXPENSES TO IMPLEMENT, MAINTAIN, AND**
20 **ADMINISTER THE PROGRAM SHALL BE AS PROVIDED IN THE STATE BUDGET.**

21 **(4) IN ACCOUNTING FOR EXPENSES OF PARTICULAR PLANS,**
22 **FUNDS, TRUSTS, OR ACCOUNTS, THE PROGRAM SHALL ADHERE TO AND COMPLY**
23 **WITH:**

24 **(I) ALL ACCOUNTING AND OTHER APPLICABLE**
25 **REQUIREMENTS FOR PLANS OF PRIVATE EMPLOYERS UNDER ERISA; AND**

26 **(II) ANY APPLICABLE QUALIFICATION REQUIREMENTS**
27 **UNDER THE INTERNAL REVENUE CODE.**

28 **(E) A CLAIM, TAX LIEN, OR OTHER RIGHT OF SET-OFF OF THE STATE**
29 **MAY NOT BE APPLIED AGAINST ANY FUND COMING INTO THE POSSESSION OF A**
30 **STATE OFFICIAL UNDER THIS SUBTITLE.**

31 **SUBTITLE 3. LIMITATION OF LIABILITY.**

1 **41-301.**

2 (A) THIS TITLE DOES NOT CREATE OR PERMIT ANY OBLIGATION ON THE
3 BOARD OR THE STATE TO PROVIDE ANY GUARANTEE OF INVESTMENT RETURN
4 OR ANY OTHER GUARANTEE FOR THE BENEFIT OF ANY INDIVIDUAL OR ENTITY.

5 (B) MONEYS OR OTHER ASSETS OF THE RETIREMENT PLANS MAY NOT
6 BE CONSIDERED STATE MONEYS OR ASSETS.

7 (C) THE BOARD AND THE STATE MAY NOT INSURE, GUARANTEE, OR
8 HAVE ANY SIMILAR RESPONSIBILITY OR ANY LIABILITY WITH RESPECT TO
9 ACCOUNTS, MONEYS, OR GAINS OR LOSSES OF INVESTMENT RETURNS, UNDER
10 THE RETIREMENT PLANS.

11 (D) (1) DEBTS OR OBLIGATIONS OF THE RETIREMENT PLANS MAY
12 NOT BE CONSIDERED DEBTS OR OBLIGATIONS OF THE STATE.

13 (2) THE FAITH, CREDIT, AND TAXING POWER OF THE STATE MAY
14 NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY, MORALLY OR
15 OTHERWISE, TO THE PAYMENT OF ANY SUCH DEBTS OR OBLIGATIONS.

16 **41-302.**

17 THE BOARD AND THE STATE MAY NOT BE LIABLE FOR ANY ACT OR
18 OMISSION RELATING TO THE PROGRAM OR THEIR RESPONSIBILITIES OR
19 AUTHORITIES UNDER THIS TITLE, INCLUDING ANY LIABILITY UNDER TITLE 12,
20 SUBTITLES 1 AND 2 OF THE STATE GOVERNMENT ARTICLE.

21 **41-303.**

22 THE BOARD SHALL SEEK TO OBTAIN, IN CONNECTION WITH ANY
23 ERISA-GOVERNED RETIREMENT PLAN, THE PROTECTION AFFORDED BY
24 ERISA SECTION 404(C) FROM FIDUCIARY LIABILITY (INCLUDING, WITHOUT
25 LIMITATION, WITH RESPECT TO DEFAULT INVESTMENTS).

26 **41-304.**

27 THE STATE SHALL INDEMNIFY THE BOARD AND ANY EMPLOYEE OF THE
28 BOARD WHO IS, OR IS THREATENED TO BE MADE, A PARTY TO AN ACTION OR
29 PROCEEDING, INCLUDING AN ADMINISTRATIVE OR INVESTIGATIVE
30 PROCEEDING, BY REASON OF ANY SERVICES PROVIDED UNDER THIS TITLE, IN A
31 MANNER SIMILAR TO THE INDEMNIFICATION PROVISIONS FOR FIDUCIARIES
32 UNDER § 21-207 OF THIS ARTICLE.

1 **41-305.**

2 **NOTWITHSTANDING ANY OTHER LAW THAT LIMITS THE TYPE OF**
3 **INVESTMENTS THAT MAY BE MADE WITH STATE FUNDS OR IMPOSES**
4 **CONDITIONS ON THE DEPOSIT OF STATE FUNDS, ASSETS OF THE PROGRAM MAY**
5 **BE DEPOSITED AND INVESTED IN ACCORDANCE WITH:**

6 **(1) THE INVESTMENT ELECTIONS ALLOWED UNDER THE RETIREMENT**
7 **PLANS; OR**

8 **(2) ANY TERMS OF THE RETIREMENT PLANS.**

9 **SUBTITLE 4. RETIREMENT PLANS.**

10 **41-401.**

11 **(A) THE BOARD MAY ESTABLISH:**

12 **(1) ONE OR MORE QUALIFIED § 401(A) OR § 401(K) PLANS AND**
13 **TRUSTS OR SAVINGS INCENTIVE MATCH PLANS UNDER § 408(P) OF THE**
14 **INTERNAL REVENUE CODE, OR PAYROLL DEDUCTION IRA ARRANGEMENTS**
15 **FOR THE EMPLOYEES OF PARTICIPATING EMPLOYERS, WHICH MAY INCLUDE**
16 **SALARY REDUCTION ARRANGEMENTS AND MASTER OR PROTOTYPE PLANS;**

17 **(2) ADMINISTRATIVE SERVICE ARRANGEMENTS, INCLUDING**
18 **GROUP ARRANGEMENTS, THAT ALLOW PARTICIPATING EMPLOYERS TO ACHIEVE**
19 **ECONOMIES OF SCALE FOR PENSION OR RETIREMENT SAVINGS ARRANGEMENTS**
20 **RELATING TO ACCOUNTING, INVESTMENT, PAYROLL PROCESSING, EMPLOYEE**
21 **COMMUNICATION, OR INVESTOR EDUCATION;**

22 **(3) GROUP INVESTMENT VEHICLES FOR THE RETIREMENT PLANS**
23 **OR PAYROLL DEDUCTION IRA ARRANGEMENTS OF PARTICIPATING EMPLOYERS;**

24 **(4) CUSTODIAL OR TRUST ARRANGEMENTS FOR PAYROLL**
25 **DEDUCTION IRAS FOR EMPLOYEES OF PARTICIPATING EMPLOYERS; AND**

26 **(5) ARRANGEMENTS CORRESPONDING TO THOSE DESCRIBED IN**
27 **ITEMS (1) THROUGH (4) OF THIS SUBSECTION FOR IRAS, IN ADDITION TO**
28 **PAYROLL DEDUCTION IRAS.**

29 **(B) THE BOARD SHALL OBTAIN OR CAUSE TO BE OBTAINED ANY**
30 **NECESSARY APPROVALS, RULINGS, OPINIONS, AND CONFIRMATIONS FROM**
31 **FEDERAL AUTHORITIES OR AGENCIES, INCLUDING THE INTERNAL REVENUE**

1 **SERVICE, THE U.S. DEPARTMENT OF LABOR, AND THE SECURITIES AND**
2 **EXCHANGE COMMISSION.**

3 (C) **THE PLANS AND PROGRAMS ESTABLISHED UNDER THIS TITLE**
4 **SHALL ADHERE TO ALL STANDARDS AND REQUIREMENTS UNDER FEDERAL LAW**
5 **REGULATING THE OPERATION OF PENSION PLANS OR IRAS, OR THE OFFERING,**
6 **SALE, OR DISTRIBUTION OF SECURITIES, WITHOUT REGARD TO ANY EXEMPTION**
7 **IN FEDERAL LAW AVAILABLE TO A PENSION PLAN OR IRA MAINTAINED BY A**
8 **GOVERNMENT EMPLOYER.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That, prior to implementation
10 of any plan, trust, administrative arrangement, or investment offering under this Act,
11 the State Board of Trustees of the Maryland Teachers and State Employees
12 Supplemental Retirement Plans shall obtain or cause to be obtained from any one or
13 more of the Internal Revenue Service, the U.S. Department of Labor, and the
14 Securities and Exchange Commission any approvals, rulings, opinions, and
15 confirmations that may be necessary with respect to, or to confirm the validity of, the
16 plan, trust, administrative arrangement, or investment offering.

17 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
18 take effect contingent on, and as of the first day of the month after, the receipt of all
19 approvals, rulings, opinions, and confirmations that may be necessary, as described in
20 Section 2 of this Act. If all necessary approvals, rulings, opinions, and confirmations
21 are not received by the State Board of Trustees of the Maryland Teachers and State
22 Employees Supplemental Retirement Plans on or before July 1, 2011, this Act, with no
23 further action required by the General Assembly, shall be null and void and of no
24 further force and effect. The State Board, within 5 days after receiving all necessary
25 approvals, rulings, opinions, and confirmations, shall forward a copy of each of them to
26 the Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401.

27 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions
28 of Section 3 of this Act, Section 1 of this Act shall take effect July 1, 2009.

29 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to the provisions
30 of Section 4 of this Act, this Act shall take effect July 1, 2008.