HJ 11

Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Joint Resolution 11 (Delegate Frank)
Appropriations

General Assembly Compensation Commission - Recommendations - Optional Retirement Program

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This joint resolution rejects the recommendations of the General Assembly Compensation Commission (GACC) regarding (1) changes in the salary received by members and Presiding Officers of the General Assembly; (2) the allowance for in-district travel and reimbursement for out-of-state travel; and (3) benefits available under the Legislative Pension Plan (LPP). In addition, it closes LPP as of January 1, 2011, and requires current and future LPP members to join the Optional Retirement Program (ORP).

Fiscal Summary

State Effect: To the extent that the provisions of the resolution related to membership in ORP can be implemented, general fund expenditures increase by $47,173 in FY 2011 for ORP employer contributions on behalf of members of the General Assembly; this reflects the January 1, 2011 start date for membership in ORP. Future year expenditures reflect 3.5% annual growth in normal cost rates and annualization. Other provisions of the joint resolution have no effect on State finances. No effect on revenues.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	$0	$0	$0	$0	$0
GF Expenditure	47,200	76,800	58,700	39,900	22,200
Net Effect	($47,200)	($76,800)	($58,700)	($39,900)	($22,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Provisions of the GACC resolution related to compensation for members of the General Assembly and the Presiding Officers and to reimbursement of expenses related to official out-of-state travel remain as provided in the resolution of the General Assembly Compensation Commission dated January 6, 2006. Provisions related to the allowance for in-district travel and optional retirement allowances shall be as provided in the resolution of the General Assembly Compensation Commission dated January 11, 2002.

Current LPP members with at least eight years of creditable service (*i.e.*, those vested under the plan) receive a retirement allowance based on their creditable service in LPP prior to joining ORP in accordance with current LPP provisions, except for members who join the Judges' Retirement System after resigning from the General Assembly. Current LPP members with less than eight years of service at the time they are required to join ORP may either purchase additional service credit under current rules or request a return of their member contributions, plus interest.

Current LPP members may not transfer service credit to ORP. LPP members with at least 22 years and 3 months of LPP service credit may not join ORP.

Current Law:

General Assembly Compensation Commission

A constitutional amendment, approved by the voters in 1970, created the nine-member GACC and specified that the commission submit salary and allowance recommendations to the legislature every four years. Members of the General Assembly and State and local government officers and employees are not eligible for appointment to the commission.

The constitutional provisions, Article III, Section 15, provide that:

- The compensation commission must submit its compensation, allowances, and pension recommendations to the General Assembly by formal resolution within 15 days after the beginning of the last regular General Assembly session in a four-year term of office. In 2010, the commission was required to submit its resolution proposing compensation and allowances for the 2011-2014 General Assembly term by January 27, 2010.
- Rates of compensation and pensions must be uniform for all members of the General Assembly, except that the officers of the Senate and the House of

Delegates (traditionally, the President and the Speaker) may receive higher compensation.

- Compensation allowances may not be less than the dollar amounts prior to the establishment of the first compensation commission in 1970.
- Through a joint resolution, the General Assembly may reduce or reject, but may not increase, any item in the resolution.
- The commission's resolution, with any reductions concurred in by joint resolution of the General Assembly, has the force of law and takes effect at the beginning of the next General Assembly.
- The provisions of each resolution govern until superseded by a subsequent resolution.

The Maryland Constitution, as interpreted by the Attorney General, gives GACC exclusive jurisdiction over salaries, meal and lodging expense allowances, travel allowances, employee benefit programs, and the legislative retirement system. This exclusive jurisdiction extends only to payments made to the legislators themselves.

The *Report of the General Assembly Compensation Commission*, published on January 12, 2010, contains exhibits that set forth the process and timeline by which a resolution takes effect, and summarize the commission's 10 preceding resolutions.

Legislative Pension Plan

LPP is the only pension plan administered by the State Retirement and Pension System (SRPS) that is optional for eligible members; all other plans are required for eligible members as a condition of their employment. Only elected members of the General Assembly are eligible for membership in LPP. LPP members contribute 5% of their salary for up to 22 years and 3 months; contributions are not required beyond that time. They are vested in the plan after eight years (two terms). Vested members are eligible for a full0service retirement allowance upon reaching age 60, as long as they are no longer serving in the General Assembly. Their annual retirement allowance is 3% of the salary of a current member of the General Assembly for each year of service credit, but is capped at two-thirds of the salary of a current member.

For the purpose of calculating employer contributions, LPP is combined with the Employees' Retirement System (ERS), Employees' Pension System (EPS), and Correctional Officers' Retirement System for the annual actuarial valuation. Therefore, employer contributions for LPP are the same as those for the combined employees' plans.

Optional Retirement Program

ORP is a defined contribution plan that provides an employer contribution of 7.25% of earnable compensation; there is no employee contribution. Vesting is immediate, member accounts are portable, and members may invest their accounts in any of many investment options offered by the plan administrators, which are selected by the Board of Trustees of SRPS. Current plan administrators are TIAA-CREF and Fidelity Investments. Upon retirement, members may elect to purchase annuities with their accumulated funds.

Only faculty members and other designated employees of the following educational institutions are eligible to join ORP:

- the University System of Maryland (USM);
- Morgan State University;
- St. Mary's College;
- the Maryland Higher Education Commission; and
- community colleges or regional community colleges in the State, including Baltimore City Community College.

A decision to join ORP is a one-time, irrevocable decision that must be made within one year of becoming eligible to join ORP. ORP members are not eligible to participate in any of the defined benefit plans offered by the State.

Background: The 2010 General Assembly Compensation Commission report recommends that salaries remain at current levels for the first two years of the next term of office – $43,500 for members and $56,500 for Presiding Officers. The commission also recommends that, if the State's annual unemployment rate is 5% or lower for calendar 2012, the salary for members of the General Assembly increases to $45,500 on January 1, 2013, and remains at that level for calendar 2014. A similar $2,000 increase also takes effect for the Presiding Officers, to $58,500. If the State unemployment rate for calendar 2012 is greater than 5%, but is 5% or lower for calendar 2013, the salary for members of the General Assembly increases to $45,500 only for calendar 2014. Compensation for Presiding Officers also increases by $2,000 under those conditions.

Regarding expense reimbursements and allowances, the commission recommends that the annual in-district travel allowance increases from $500 to $650; the General Assembly previously rejected an increase from $500 to $600 recommended by the 2006 commission. The commission's resolution also replaces the current $225 per day limit for reimbursement of approved out-of-state travel expenses with a requirement that such reimbursements be subject to the most current published federal General Services

Administration (GSA) daily per diem rates for meals and lodging. The 18-city average reimbursement rate of $222 under the GSA schedule is comparable to the current $225 limit.

The commission recommends two changes to LPP. First, members who have served, or currently serve, in the active-duty military are eligible to claim up to three years of military service credit after accruing eight years of creditable service in the LPP. Second, the commission's resolution repeals or amends two optional forms of retirement allowances due to Internal Revenue Service (IRS) concerns that the optional allowances put the plan's tax-exempt status at risk; similar changes were made to the employees' and teachers' plans administered by SRPS. The commission also recommends continuation of the current resolution with respect to health and other benefits that are generally available to State employees.

State Fiscal Effect: The State employer pension contribution consists of two components: an amortization payment that pays off a portion of the liabilities that current members of the plans have already accrued, and a "normal cost" payment that covers the cost of the liabilities that current members accrue in the current year. The amortization payment is not significantly affected by the resolution because current LPP members are still entitled to the LPP benefits they have accrued, so the State must continue to make those amortization payments.

State general fund expenditures increase due to the gap between the normal cost rate, the second component of the employer contribution, and the ORP contribution rate. The normal cost represents the cost of benefits earned by a member in a given year and, therefore, should be compared with the 7.25% annual employer contribution made for ORP members. As shown in **Exhibit 1**, the employer contribution rate of 7.25% for ORP members is substantially higher than recent normal cost rates for LPP members (as calculated for the combined employees' plans).

Exhibit 1
Normal Cost Rates and ORP Contributions
Fiscal 2010 and 2011

	LPP Normal Cost	ORP Contribution
FY 2010	6.02%	7.25%
FY 2011	6.10%	7.25%

Source: Cheiron; Gabriel, Roeder, and Smith

Based on current General Assembly salaries of $43,500 for members and $56,500 for Presiding Officers, total General Assembly compensation for all 188 members is $8.2 million. Based on the contribution rates shown above, general fund expenditures increase by $47,173 in fiscal 2011 because of the higher ORP contribution rates. This reflects the January 1, 2011 start date for ORP membership. Future year expenditures assume 3.5% annual growth in normal cost rates and stable compensation for General Assembly members through fiscal 2014. Compensation is assumed to increase by 8% in fiscal 2015.

The Office of the Attorney General (OAG) notes that tax-exempt status for ORP is only approved by IRS for educational employees; inclusion of noneducational employees could jeopardize ORP's tax-exempt status. IRS approval would be needed to expand ORP to include legislative members, as proposed by the resolution, or to create a parallel plan for legislative members. Given the time that the IRS typically takes to process applications for new or amended tax-exempt plans (often as long as 18 to 24 months), the Department of Legislative Services does not believe that necessary approval will be received by the January 1, 2011 deadline imposed by the resolution.

OAG has also raised concerns about the constitutionality of the resolution's provisions because of the potential for retirement benefits under ORP to exceed benefits provided under LPP, primarily due to the immediate vesting in ORP. As noted above, the Maryland Constitution prohibits the General Assembly from increasing any compensation or benefits recommended by GACC. The General Assembly also considers bills that alter ORP benefits and if ORP benefits were increased, it might be found to be an increase prohibited by the constitution.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Mercer Human Resources Consulting, Maryland State Retirement Agency, Office of the Attorney General, Department of Legislative Services

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