

# HOUSE BILL 843

K4

11r2141

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By: **Delegate Kach**

Introduced and read first time: February 11, 2011

Assigned to: Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Retirement and Pension System – Optional Retirement Program –**  
3 **Membership and Participation**

4 FOR the purpose of providing that certain employees are not members of the  
5 Employees' Retirement or Pension Systems or the Teachers' Retirement or  
6 Pension Systems of the State Retirement and Pension System if the employees  
7 make certain elections to join a certain other retirement program; requiring  
8 that certain participating employers provide certain employees with the  
9 opportunity to participate in the optional retirement program of the State  
10 Retirement and Pension System; providing that certain supervising employers  
11 are not responsible for the payment of certain benefits payable under the  
12 optional retirement program; requiring certain supervising employers to  
13 administer certain aspects of the participation of certain employees  
14 participating in the optional retirement program; providing that certain  
15 employees who are hired on or after a certain date are eligible to participate in  
16 the optional retirement program; requiring that certain employees who elect to  
17 participate in the optional retirement program make such an election within a  
18 certain period of time; defining a certain term; and generally relating to  
19 participation in the optional retirement program of the State Retirement and  
20 Pension System.

21 BY repealing and reenacting, with amendments,  
22 Article – State Personnel and Pensions  
23 Section 23–201, 30–101, 30–201, 30–202, 30–207, 30–210, 30–301,  
24 30–302, 30–303, 30–305, and 30–307  
25 Annotated Code of Maryland  
26 (2009 Replacement Volume and 2010 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.





1 (ii) transfers from the Employees' Retirement System on or  
2 after October 1, 2002;

3 (iii) transfers from the Teachers' Pension System in accordance  
4 with § 23-202.1 of this subtitle; or

5 (iv) becomes an employee of the Baltimore City Community  
6 College on or after October 1, 2002;

7 (11) a court reporter for the Circuit Court for Charles County who is a  
8 member of the Employees' Pension System on July 1, 1994, or transfers from the  
9 Employees' Retirement System on or after July 1, 1994;

10 (12) a staff employee of the University System of Maryland, Morgan  
11 State University, or St. Mary's College who is:

12 (i) a member of the Employees' Pension System on January 1,  
13 1998, or transfers from the Employees' Retirement System on or after January 1,  
14 1998; or

15 (ii) a staff employee of the University System of Maryland,  
16 Morgan State University, or St. Mary's College who becomes an employee on or after  
17 January 1, 1998;

18 (13) on or after the date that the Board of Education of Kent County  
19 begins participation in the Employees' Pension System, a supportive service employee  
20 of the Board of Education of Kent County;

21 (14) an employee of the Town of Oakland on or after the date that the  
22 Town of Oakland begins participation in the Employees' Pension System;

23 (15) an employee of the City of Frostburg on or after the date that the  
24 City of Frostburg begins participation in the Employees' Pension System;

25 (16) an employee of the Town of Berwyn Heights on or after the date  
26 that the Town of Berwyn Heights begins participation in the Employees' Pension  
27 System;

28 (17) an employee of the Town of Sykesville on or after the date that the  
29 Town of Sykesville begins participation in the Employees' Pension System; and

30 (18) an employee of the Town of University Park on or after the date  
31 that the Town of University Park begins participation in the Employees' Pension  
32 System.

33 (b) Sections 23-203 through 23-205 of this subtitle do not apply to:

1 (1) an individual who is or is entitled to be a member of any State  
2 system other than the Employees' Pension System;

3 (2) a contractual, emergency, or temporary extra employee;

4 (3) an individual who is employed under a federal public service  
5 employment program;

6 (4) an assessor who is a member of a retirement or pension system  
7 operated by a political subdivision of the State;

8 (5) an employee of a local board of elections who chooses to stay in a  
9 local merit system under § 2–207 of the Election Law Article;

10 (6) a nonclerical or nonprofessional employee of the Baltimore City  
11 Community College who:

12 (i) was an employee of the New Community College of  
13 Baltimore during the 1989–1990 academic year;

14 (ii) was employed by the New Community College of Baltimore  
15 on or before December 31, 1990, as a “Class A” member of the Baltimore City  
16 Retirement Plan; and

17 (iii) elected to remain a member of the Baltimore City  
18 Retirement Plan;

19 (7) an employee who is not a member of a State system and who  
20 accepts a position for which the budgeted hours per fiscal year are less than 500 hours  
21 in the first fiscal year of employment;

22 (8) an employee of the Domestic Relations Division of the Anne  
23 Arundel County Circuit Court who:

24 (i) was transferred on or after July 1, 2002, into the State  
25 Personnel Management System as an employee of the Child Support Enforcement  
26 Administration of the Maryland Department of Human Resources;

27 (ii) elected, under § 2–510 of the Courts Article, to remain as a  
28 participant in the Anne Arundel County Retirement and Pension System; and

29 (iii) remains as an employee of the Child Support Enforcement  
30 Administration of the Maryland Department of Human Resources or an attorney  
31 employed to represent the Child Support Enforcement Administration;

32 (9) a nonfaculty employee of the Baltimore City Community College  
33 who is eligible to participate and elects to participate in an optional retirement  
34 program under Title 30 of this article;

1 (10) an appointed or elected official who on or after July 1, 2007, is a  
2 member of any other State or local retirement or pension system as defined under  
3 Title 37 of this article; [or]

4 (11) the Director of the Department of Social Services in Montgomery  
5 County who:

6 (i) was transferred into the State Personnel Management  
7 System as an employee of the Social Services Administration of the Maryland  
8 Department of Human Resources;

9 (ii) elected, under § 3-403.1 of the Human Services Article, to  
10 remain as a participant in the Montgomery County Employees' Retirement System;  
11 and

12 (iii) remains as an employee of the Social Services  
13 Administration of the Maryland Department of Human Resources; **OR**

14 **(12) AN INDIVIDUAL WHO HAS ELECTED TO PARTICIPATE IN AN**  
15 **OPTIONAL RETIREMENT PROGRAM UNDER TITLE 30 OF THIS ARTICLE.**

16 30-101.

17 (a) In this title the following words have the meanings indicated.

18 (b) (1) "Annuity contract" means a fixed or variable annuity contract or  
19 combination of fixed or variable annuity contracts authorized under [§ 403(a) or (b)] §  
20 **401(A) OR § 403(A) OR (B)** of the Internal Revenue Code.

21 (2) "Annuity contract" includes a custodial account to be invested in  
22 regulated investment company stock as provided in § 401(f) or § 403(b)(7) of the  
23 Internal Revenue Code.

24 (c) "Designated company" means an entity that:

25 (1) on or before March 1, 1993, was designated by the governing board  
26 of an employing institution to offer annuity contracts under the program; or

27 (2) is designated by the Board of Trustees.

28 (d) "Eligible employee" means an individual eligible to participate in the  
29 program.

30 (e) "Employing institution" means:

31 (1) the University System of Maryland;

1 (2) Morgan State University;

2 (3) St. Mary's College;

3 (4) the Maryland Higher Education Commission with respect to  
4 eligible employees of the Commission; and

5 (5) any community college or regional community college established  
6 under Title 16 of the Education Article.

7 (f) "Participating employee" means an eligible employee who elects to  
8 participate in the program.

9 (g) "Pension system" means the Employees' Pension System or the Teachers'  
10 Pension System.

11 (h) "Program" means the optional retirement program established under §  
12 30-201 of this title.

13 (i) "Retirement system" means the Employees' Retirement System or the  
14 Teachers' Retirement System.

15 (j) **"SUPERVISING EMPLOYER" MEANS:**

16 **(1) ANY UNIT OF STATE GOVERNMENT;**

17 **(2) A COUNTY BOARD OF EDUCATION OR THE BALTIMORE CITY**  
18 **BOARD OF SCHOOL COMMISSIONERS;**

19 **(3) A LIBRARY THAT IS ESTABLISHED UNDER THE EDUCATION**  
20 **ARTICLE; OR**

21 **(4) AN EMPLOYING INSTITUTION.**

22 **(K)** "Supplemental retirement plans" means plans established pursuant to §  
23 30-401 of this title.

24 30-201.

25 (a) There is an optional retirement program in which eligible employees may  
26 participate.

27 (b) Under the program, annuity contracts offered by a designated company  
28 that provide retirement and death benefits may be purchased for participating  
29 employees.

1 (c) (1) The Board of Trustees shall administer the program to the extent  
2 provided in this title.

3 (2) The State Retirement Agency shall carry out the administrative  
4 duties of the Board of Trustees.

5 (d) The program shall be offered by each [employing institution]  
6 **SUPERVISING EMPLOYER.**

7 30-202.

8 (a) The Board of Trustees may designate not more than four companies, in  
9 addition to the company that was designated by a governing board of an employing  
10 institution on or before March 1, 1993, from which annuity contracts are to be  
11 purchased under the program.

12 (b) (1) The Board of Trustees shall approve the form and contents of  
13 annuity contracts to be offered by a company that is designated by the Board of  
14 Trustees under subsection (a) of this section.

15 (2) The Board of Trustees may also approve the form and contents of  
16 additional types of annuity contracts to be offered for the first time after October 1,  
17 1993, by the company designated by the governing board of an employing institution  
18 on or before March 1, 1993.

19 (c) In making the designation and giving approval under this section, the  
20 Board of Trustees shall consider:

21 (1) the nature and extent of the rights and benefits to be provided by  
22 the annuity contracts for participating employees and their beneficiaries;

23 (2) the relation of those rights and benefits to the amount of  
24 contributions to be made;

25 (3) the suitability of the rights and benefits to the needs of the  
26 participating employees and the interests of the [employing institutions]  
27 **SUPERVISING EMPLOYERS** in the recruitment and retention of participating  
28 employees;

29 (4) the ability of the company to provide for suitable rights and  
30 benefits under the annuity contracts;

31 (5) the selection of annuity contracts offered by the company;

1 (6) the financial stability of the company and whether the company  
2 meets minimum financial criteria, if any, including a minimum net worth  
3 requirement, if any, established by the Board of Trustees; and

4 (7) the effect of any fees, commissions, or other charges imposed or  
5 collected in connection with an annuity contract.

6 30–207.

7 Benefits under the program:

8 (1) shall be payable to participating employees or their beneficiaries in  
9 accordance with the terms of the annuity contracts; and

10 (2) are not payable by [the State or governing board of an employing  
11 institution] **A SUPERVISING EMPLOYER.**

12 30–210.

13 With respect to a participating employee who is employed by [an employing  
14 institution or an institution over which the employing institution has administrative  
15 authority, the employing institution] **A SUPERVISING EMPLOYER, THE**  
16 **SUPERVISING EMPLOYER** shall administer the participating employee's enrollment,  
17 termination, or retirement under the program.

18 30–301.

19 (a) An individual is eligible to participate in the program if the individual is  
20 eligible for membership in a retirement system or a pension system, and is:

21 (1) a member of the faculty of an employing institution;

22 (2) a professional employee at a community college or regional  
23 community college established under Title 16 of the Education Article;

24 (3) an employee of the University System of Maryland who is in a  
25 position designated as exempt under a policy adopted by the University System of  
26 Maryland Board of Regents;

27 (4) an employee of Morgan State University who is in a position  
28 designated as professional or administrative by the Board of Regents of Morgan State  
29 University; [or]

30 (5) an employee of St. Mary's College of Maryland who is in a position  
31 determined by the Board of Trustees of the College to be a professional or faculty  
32 position; **OR**



1           **(6) AN INDIVIDUAL HIRED ON OR AFTER JULY 1, 2011, WHO IS:**

2                   **(I) A REGULAR EMPLOYEE WHOSE COMPENSATION IS**  
3 **PROVIDED BY STATE APPROPRIATION OR PAID FROM STATE FUNDS;**

4                   **(II) AN APPOINTED OR ELECTED OFFICIAL OF THE STATE,**  
5 **WHO IS APPOINTED OR ELECTED TO A TERM OF OFFICE THAT BEGINS ON OR**  
6 **AFTER JULY 1, 2011, INCLUDING:**

7                           **1. A CLERK OF THE CIRCUIT COURT;**

8                           **2. A REGISTER OF WILLS;**

9                           **3. A STATE'S ATTORNEY; AND**

10                           **4. A SHERIFF;**

11                   **(III) AN EMPLOYEE OF A DAY SCHOOL IN THE STATE UNDER**  
12 **THE AUTHORITY AND SUPERVISION OF A COUNTY BOARD OF EDUCATION OR THE**  
13 **BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS, EMPLOYED AS:**

14                           **1. A CLERK;**

15                           **2. A HELPING TEACHER;**

16                           **3. A PRINCIPAL;**

17                           **4. A SUPERINTENDENT;**

18                           **5. A SUPERVISOR; OR**

19                           **6. A TEACHER;**

20                   **(IV) A LIBRARIAN OR CLERICAL EMPLOYEE OF A LIBRARY**  
21 **THAT IS ESTABLISHED OR OPERATES UNDER THE EDUCATION ARTICLE;**

22                   **(V) A STAFF EMPLOYEE OF THE UNIVERSITY SYSTEM OF**  
23 **MARYLAND, MORGAN STATE UNIVERSITY, OR ST. MARY'S COLLEGE; OR**

24                   **(VI) A NONFACULTY EMPLOYEE OF THE BALTIMORE CITY**  
25 **COMMUNITY COLLEGE.**

26           (b) (1) This subsection applies to an individual who:

1 (i) on August 22, 2004, was eligible to participate in the  
2 program; and

3 (ii) is in a position that, as of August 23, 2004, was reclassified  
4 by the University System of Maryland Board of Regents or the Board of Regents of  
5 Morgan State University and would no longer be eligible for participation in the  
6 program under subsection (a) of this section.

7 (2) An individual described under paragraph (1) of this subsection may  
8 continue to participate in the program if the individual:

9 (i) would otherwise be eligible for membership in a system  
10 under the State Retirement and Pension System; and

11 (ii) is employed by an employing institution.

12 30–302.

13 (a) An election to participate in the program shall be made by an eligible  
14 employee within 1 year of first becoming an eligible employee of [an employing  
15 institution] **A SUPERVISING EMPLOYER**.

16 (b) An eligible employee's election to participate in the program is a  
17 one-time irrevocable election.

18 30–303.

19 (a) An eligible employee shall elect to:

20 (1) join a pension or retirement system in accordance with the  
21 provisions of this Division II applicable to that system; or

22 (2) participate in the program.

23 (b) An eligible employee shall:

24 (1) make an election under this section in writing; and

25 (2) file the election with the Board of Trustees and the [employing  
26 institution] **SUPERVISING EMPLOYER** within 1 year of first becoming an eligible  
27 employee of [an employing institution] **A SUPERVISING EMPLOYER**.

28 (c) An eligible employee may not participate in the program if both the  
29 Board of Trustees and the [employing institution] **SUPERVISING EMPLOYER** have  
30 not received the eligible employee's written election required under subsection (b) of  
31 this section, within 1 year of first becoming an eligible employee with [an employing  
32 institution] **A SUPERVISING EMPLOYER**.

1 (d) The effective date of the election shall be the first day of the month after  
2 the election.

3 30–305.

4 (a) This section applies only to a State employee who becomes eligible to  
5 elect participation in the program if the employee is appointed, promoted, transferred,  
6 or reclassified to a position as an eligible employee.

7 (b) A State employee described in subsection (a) of this section may elect to  
8 participate in the program.

9 (c) An eligible employee shall:

10 (1) make an election under this section in writing; and

11 (2) file the election with the Board of Trustees and the [employing  
12 institution] **SUPERVISING EMPLOYER** within 1 year of first becoming an eligible  
13 employee of [an employing institution] **A SUPERVISING EMPLOYER**.

14 (d) An eligible employee may not participate in the program if both the  
15 Board of Trustees and the [employing institution] **SUPERVISING EMPLOYER** have  
16 not received the eligible employee's written election required under subsection (c) of  
17 this section, within 1 year of first becoming an eligible employee with [an employing  
18 institution] **A SUPERVISING EMPLOYER**.

19 30–307.

20 (a) Except as otherwise provided in this section, an election to participate in  
21 the program is a waiver of all rights and benefits provided by the retirement or  
22 pension system in which the participating employee was a member on the effective  
23 date of the election.

24 (b) For the purpose of determining eligibility for immediate vested rights or  
25 benefits in a retirement system or pension system, an eligible employee who is a  
26 member of that State system when the employee elects to participate in the program is  
27 deemed to have separated from employment on the effective date of the election.

28 (c) The Board of Trustees may only compute retirement system or pension  
29 system benefits on the basis of years of creditable service as a member of that State  
30 system.

31 (d) (1) This section applies only to a participating employee whose last  
32 employer prior to joining the program was a participating employer that does not  
33 participate in the employer pick-up program as defined in § 414(h)(2) of the Internal  
34 Revenue Code.

1           (2) A participating employee may withdraw any accumulated  
2 contributions in the annuity savings fund on or after the effective date of the  
3 participating employee's election to join the program.

4           (3) If a participating employee withdraws the accumulated  
5 contributions, the participating employee forfeits any right to a benefit in the State  
6 system from which the accumulated contributions were withdrawn.

7           (e) A participating employee is ineligible for membership in a retirement  
8 system or pension system while the participating employee is employed in any eligible  
9 position by any [employing institution] **SUPERVISING EMPLOYER.**

10           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 July 1, 2011.