Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1318 (Delegate Hucker)
Economic Matters and Appropriations

Maryland Secure Choice Retirement Savings Program and Maryland Secure Choice Retirement Savings Trust

This bill establishes the Maryland Secure Choice Retirement Savings Trust and Program to provide a retirement savings plan to employees of private-sector employers with at least five employees that do not already provide an employer-sponsored retirement or pension plan. The bill phases in a requirement that eligible employers make the program available to their employees through a payroll deduction. Employees of participating employers are required to participate unless they opt out. Before the program begins operation, (1) a market analysis must determine that it is self-sustaining; (2) the program must secure qualification from the federal Internal Revenue Service as a tax-favored plan; and (3) it must be determined that the plan is not subject to the federal Employee Retirement Income Security Act (ERISA).

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: General fund expenditures by the Comptroller's Office increase by $176,800 in FY 2016 to enforce the bill's requirements, which reflects delayed implementation due to the bill's requirements. Out-year expenditures reflect inflation, employee turnover, and the elimination of one-time costs. The Department of Business and Economic Development (DBED) can carry out its responsibilities under the bill with existing budgeted resources. No effect on revenues.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	0	176,800	119,100	124,600
Net Effect	$0	$0	($176,800)	($119,100)	($124,600)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Governance

The bill establishes the Maryland Secure Choice Retirement Savings Investment Board to administer the trust and the program. All expenses, including employee costs, for the board are paid by the trust or program. Members of the board must (1) act solely in the interest of the program participants, as specified in the bill; (2) establish a written investment policy subject to restrictions in the bill; and (3) approve an entity to manage the trust's investments, with costs paid directly from the trust. Those costs do not count against the board's administrative expenses. The board must adopt regulations that are consistent with the federal Internal Revenue Code (IRC) and that ensure that the program meets the criteria for tax-deferral or tax-exempt status, or both. The bill grants the board additional powers and authority to administer the trust and program.

Any funding mechanism approved by the board must protect, indemnify, and hold the State harmless at all times against any and all liability with respect to funding retirement benefits under the program. The State has no liability or obligation for the payment of benefits earned by program participants. The board must conduct an annual audit and submit copies of the audit report and specified supplemental materials to the Governor and General Assembly.

Before opening the program to enrollees, the board must disseminate, through DBED, an employee information packet with appropriate background and disclosures about the program. It must also, if there is sufficient interest by vendors, establish a Retirement Investments Clearinghouse on its website that includes specified information about vendors that wish to offer investment vehicles to participating employees, subject to a registration process with the board described in the bill. The cost of establishing and maintaining the clearinghouse is borne equally by the registered vendors.

Participation and Benefits

Eligible employers are nongovernmental employers with more than five employees. Within three months of the program opening to enrollees, eligible employers with more 100 employees that do not sponsor a retirement or pension plan for their employees must

establish a payroll deduction program to allow employees to participate. The same requirement extends to eligible employers with more than 50 employees after six months, and to all remaining eligible employers after nine months. The Comptroller has authority to enforce employer compliance. Employers found to be in noncompliance for between 90 and 180 days pay a penalty of $250 per employee; employers found to be in noncompliance for more than 180 days pay an additional penalty of $500 per employee. All penalties are paid to the trust.

If the board determines that voluntary employer contributions to an employee's account are allowed under IRC and would not subject the program to ERISA, it may establish a process to allow employers to make voluntary contributions to an employee's account. Employers are not liable for an employee's decision to participate or to opt out of the program, or for their investment decisions. Employers are not fiduciaries of the program.

Employees of eligible employers may participate in the plan unless they (1) are covered under the Federal Railway Act; (2) are engaged in interstate commerce; or (3) are covered by a valid collective bargaining agreement that provides a multi-employer pension plan. Employees are automatically enrolled in the program unless they opt out; employees must actively opt out at least every two years during designated open enrollment periods, or they are automatically enrolled during those periods. Employees contribute 3% of their compensation to the program. By regulation, the board may adjust the employee contribution to any amount between 2% and 4%; the employee contribution can vary depending on an employee's tenure in the program.

Contributions are made to Individual Retirement Accounts (IRA), as allowed by IRC. The board must specify annually the rate at which interest accrues to individual accounts for the following year. Interest on IRAs compounds daily. An individual's benefit under the plan is the total balance in the IRA at the time the benefit is payable.

Start-up Costs

The board may conduct the market analysis required by the bill only if sufficient funds are made available through a nonprofit organization, private entity, or federal funding. The analysis must determine whether conditions exist that allow for implementation of the bill, including:

- likely participation rates;
- participants' comfort with various investment vehicles and risk;
- contribution levels; and
- the rate of account closures and rollovers.

Before the program is implemented, the market analysis must determine that the program can be self-sustaining and that sufficient start-up funds are available from a nonprofit organization, private entity, federal funding, or the State budget to sustain the program until it has enough funds to be self-sustaining.

Current Law/Background: There is no State program that provides retirement benefits to private-sector employees. The State Retirement and Pension System provides defined benefit (DB) pension plans to all State employees as a condition of their employment; plan participation is also available to local participating governmental units at the employer's discretion. The Maryland Supplemental Retirement Plans provides voluntary tax-preferred defined contribution (DC) plans to State employees. Neither program is available to private sector employees.

Beginning in the 1980s and accelerating through the 1990s, workers' access to DB pension plans dropped considerably. According to the Center for Retirement Research (CRR) at Boston College, the share of employees with at least a DB pension plan dropped from 88% in 1983 to just 32% in 2010. The trend was most pronounced in the private sector, as most public employers have retained their DB plans. In most cases, DB plans were replaced by DC plans, with coverage from DC plans growing from 38% in 1983 to 81% in 2010 (these figures include workers covered by both types of plans).

DC plans place both the investment risk and the burden to contribute enough money on the employee rather than the employer, and research concludes that the current generation that is approaching retirement has not set aside sufficient resources to provide a comfortable and secure retirement. CRR's National Retirement Risk Index, which measures the percent of households at risk for falling more than 10% below the amount they need for a secure retirement, has been steadily rising since 1992. Most recently, the index rose from 44% in 2007, just before the Great Recession, to 53% in 2010. This is the first time that the index has shown that more than one-half of all Americans are at risk of outliving their retirement savings.

In the private sector, the lack of retirement savings stems in part from both lack of access and from low participation rates for DC plans. According to the U.S. Department of Labor, only 65% of private-sector employees have access to either a DB or DC plan sponsored by their employer. Among the relatively low number (19%) with access to a DB plan, 89% participate. However, among those with access to a DC plan (59%), only 70% participate. Even among those that do participate in a DC plan, however, there is no guarantee that they contribute sufficient savings during their working years to ensure a secure retirement (and the research has shown that they do not).

In 2012, California enacted Chapter 734, the California Secure Choice Retirement Savings Trust Act; key elements of this bill reflect the California law. Implementation of the California law is contingent on a market analysis concluding that the program can be

self-sustaining; the market analysis has not yet been conducted. A fiscal analysis concluded that initial start-up costs could be as high as $1.0 million to conduct the analysis and obtain necessary IRS approvals. It further concluded that initial annual operating expenses could be as high as $10.0 million, which would ultimately be recouped from program assets, assuming sufficient participation. As a point of reference, the annual operating budget for the Maryland State Retirement Agency (SRA) is approximately $25.0 million.

State Fiscal Effect: The bill specifies that all operating costs for the trust and program must come from trust assets. Moreover, the bill does not authorize the use of State funds for the market analysis that is required before the program can be implemented. Therefore, the State has no direct role in implementing the bill's provisions. To the extent that the State chooses to provide funds for the initial operation of the program (after the market analysis), the bill allows for such contributions. However, they are not required and, therefore, are not accounted for in this analysis.

However, two State agencies have distinct roles in the bill. DBED must distribute the employee information packet, and the Comptroller must enforce employer participation in the program. It is assumed, based on the bill's requirement, that DBED acts only as a conduit for the employee packets and that the trust absorbs the cost of producing, printing, and distributing the packets. Therefore, there is no fiscal effect on DBED to carry out its role.

The Comptroller's Office requires additional resources to notify employers of their responsibilities under the bill and to enforce their compliance with it. The Comptroller advises that it has approximately 187,000 active withholding accounts; based on U.S. Census data, the Department of Legislative Services estimates that roughly one-half of these have fewer than five employees. Therefore, the Comptroller must send notices to about 93,500 employers and must enforce compliance with the requirement that employers that do not already offer a retirement or pension plan offer a payroll deduction option to their employees. At a cost of 59.5 cents per notice, initial employer notification costs are $55,633. These costs end after the first year, but it is assumed that, on an ongoing basis, the Comptroller must send notifications to 10,000 new employers annually.

Based on the bill's requirement that a market analysis be completed and IRS approval be secured before the program can be implemented, it is assumed that implementation begins no sooner than fiscal 2016. SRA has advised in the past that IRS approval, in particular, can take at least two years, and sometimes longer.

Therefore, general fund expenditures by the Comptroller's Office increase by $176,812 in fiscal 2016, which accounts for the delayed implementation of the bill pending a market analysis and IRS approval. This estimate reflects the cost of hiring two revenue

examiners to monitor and enforce employers' compliance with the bill beginning in fiscal 2016. It includes salaries, fringe benefits, start-up costs, including for employer notifications, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$106,576
One-time Employer Notifications	55,633
Other Operating Expenses	14,603
Total FY 2016 State Expenditures	**$176,812**

Future year expenditures reflect annual increases and employee turnover as well as annual increases in ongoing operating expenses. They also reflect ongoing costs incurred by the Comptroller to notify new employers of their obligations under the bill.

There is no effect on State revenues as penalty revenues are paid to the trust, which is not a State fund.

Small Business Effect: Businesses with more than five employees that do not offer employees a pension or retirement plan must establish a system of automatic payroll deductions to the trust so that their employees can participate in the program. For some small businesses, this may pose administrative and financial burdens. Small businesses, however, have no ongoing responsibilities related to the program's administration, and they are not liable for benefits payable by the trust.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Business and Economic Development, Department of Budget and Management, Maryland State Retirement Agency, U.S Census Bureau, Boston College, Comptroller's Office, Maryland Supplemental Retirement Plans, Employees Benefit Research Institute, California Senate, Department of Legislative Services

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