Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1201 (Delegate Smigiel, *et al.*)
Appropriations

State and Local Retirement and Pension Systems - Assignment of Benefits to Trust for Disabled Individuals

This bill authorizes the State Retirement and Pension System (SRPS) and local retirement or pension systems to pay a retirement allowance into a supplemental needs trust for the benefit of a disabled retiree or beneficiary. Payments may be made to a trust only after SRPS or a local system receives (1) written notice that a retiree or beneficiary is disabled under federal criteria; (2) documentation of the creation of a valid trust; and (3) any additional information requested by SRPS or a local system. The bill also alters the definition of a disabled individual for the purposes of determining whether a designated beneficiary is disabled under State pension law. SRPS and local systems must adopt regulations to implement the bill.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Potential minimal increase in special fund expenditures by the State Retirement Agency (SRA) for outside legal counsel to review submitted trust documents for legal sufficiency. To the extent that a substantial number of members seek to assign benefits to a supplemental needs trust, additional legal and administrative staff may be necessary to process those requests, but the number of such requests is expected to be small. Potential minimal increase in Medicaid expenditures (50% general funds, 50% federal funds) and recoveries (special fund revenues) due to increased eligibility of trust beneficiaries and repayments from supplemental needs trusts. No effect on pension liabilities or contribution rates.

Local Effect: To the extent that members of local retirement and pension systems seek to assign benefits to supplemental needs trusts, local retirement and pension funds may encounter similar needs for outside counsel and/or administrative staff as SRA. No effect on local revenues.

Small Business Effect: None.

Analysis

Current Law: If a designated beneficiary of a member or retiree of SRPS is a minor or a disabled individual, the beneficiary's allowance may be paid into a trust for the benefit of the individual. However, if a beneficiary or retiree becomes disabled after payment of the allowance begins, there is no mechanism in statute for allowances to be paid into a trust.

State law references the definition of disabled individual in § 72(m)(7) of the Internal Revenue Code (IRC) for the purposes of determining whether a designated beneficiary is disabled. IRC specifies that an individual is disabled if he or she is "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration." The bill changes that reference to 42 U.S.C. § 1382c(a)(3), which is the section of the Social Security Act referenced by the statute that authorizes supplemental needs trusts; it defines a disabled individual as one who "is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Additional or alternative criteria are specified related to the employability of an individual and for disabled children.

Background: Supplemental needs trusts are authorized under the federal Social Security Act in 42 U.S.C. § 1396p(d)(4) to provide resources and care for disabled individuals beyond those paid for by government assistance. Beneficiaries of (d)(4) trusts must meet disability criteria in 42 U.S.C. § 1382c(a)(3), and the trusts may be established only by a parent, grandparent, guardian, or court. Assets in supplemental needs trusts do not count toward determining a disabled individual's eligibility for government assistance such as Medicaid or Supplemental Security Income. In order to qualify for those programs, a disabled individual may not have more than $2,000 in personal assets. Therefore, the value of retirement benefits paid to the disabled individual, if not deposited directly into the (d)(4) trust, may disqualify the individual for those programs.

Under specified conditions, any funds remaining in a (d)(4) trust when a recipient dies are used to reimburse Medicaid and/or Social Security for benefits paid to the beneficiary of the trust. For pooled trusts, remaining funds may in some instances be used for the benefit of other members of the pool.

Additional Comments: Outside tax counsel to SRPS advises that the current reference in State law to IRC § 72(m)(7) should be maintained.

Additional Information

Prior Introductions: None.

Cross File: SB 403 (Senator Kelley) - Budget and Taxation.

Information Source(s): Maryland State Retirement Agency, National Special Needs Network, Department of Legislative Services

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