Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1251 (Delegate Hucker, *et al.*)
Economic Matters and Appropriations

Maryland Secure Choice Retirement Savings Program and 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 over nine months 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) the program must secure qualification from the federal Internal Revenue Service (IRS) as a tax-favored plan and (2) 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, 2014.

Fiscal Summary

State Effect: It is assumed that start-up costs are funded by private funds and have no fiscal impact on the State. However, general fund expenditures by the Comptroller's Office increase by $356,400 in FY 2017, reflecting the delayed implementation due to the need to secure IRS approval, to enforce employer participation in the program. Out-year expenditures reflect inflation and employee turnover, as well as the termination of one-time expenses. The Department of Business and Economic Development (DBED) can disseminate information to employees with existing budgeted resources. No effect on revenues.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	0	356,400	302,400	316,300
Net Effect	$0	$0	($356,400)	($302,400)	($316,300)

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 Board to administer the trust and the program. It specifies staggered terms for specified members of the board, designates a chair, and establishes processes for removing members. All expenses, including employee costs, for the board are paid by the trust or program; however, administrative fees assessed on employee accounts to fund the program may not exceed 1% of total assets in the trust. Members of the board and its staff must (1) act solely in the interest of the program participants, as specified in the bill and (2) establish a written investment policy that includes a risk management and oversight program, as specified in the bill. The board must adopt regulations that are consistent with the federal Internal Revenue Code 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.

The State may not be held liable for the payment of retirement savings benefits payable by the program or trust. The trust's debts, contracts, and obligations are not the debts, contracts, or obligations of the State, and neither the State's full faith and credit nor taxing powers are pledged directly or indirectly to the payment of the trust's debts, contracts, and obligations. The board must conduct an annual audit by an independent certified public accountant and submit copies of the audit report to the Governor and General Assembly.

Before opening the program to enrollees, the board must design and disseminate, through DBED, an employee information packet with appropriate background and disclosures about the program, as well as an opt-out form for employees.

Participation and Benefits

Eligible employers are nongovernmental employers in the State with more than five employees that (1) have been in business for at least two years; (2) do not offer an employer-sponsored retirement plan; and (3) have not terminated an employer-sponsored plan within the last two years. Generally, eligible employees are those without access to

an employer-sponsored retirement plan; they must also be at least age 18. Within three months of the program opening to enrollees, eligible employers with more than 100 eligible 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 pay a penalty of $250 per employee. Employers who fail to deposit employee contributions into the trust in a timely fashion must pay a penalty equal to lost earnings and interest that would have been earned, as determined by the Comptroller. All penalties are paid to the trust; in the case of penalties for noncompliance, enforcement expenses of the Comptroller's Office are deducted.

The program consists of one or more payroll deposit Individual Retirement Account (IRA) arrangements. Employees are automatically enrolled in the program unless they opt out; employees must opt out during designated open enrollment periods, which occur at least once a year, 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 within that range depending on an employee's tenure in the program. The board must determine how interest earned must be allocated to program accounts. An individual's benefit under the plan is the total balance in the IRA at the time the benefit is payable.

The board is authorized to establish a separate trust fund under the appropriate section of the federal law to allow employers to make supplemental contributions on behalf of their employees. These employer accounts must be segregated from employee IRA accounts, but accrue to the benefit of the employees. 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.

Current Law: 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 provide voluntary tax-preferred defined contribution (DC) plans to State employees. Neither program is available to private-sector employees.

Background: 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 both from 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; some 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 $28.0 million.

In January 2014, President Obama announced he was establishing a MyRA program. Similar to IRAs, MyRAs allow employees to deduct a portion of their pay to be deposited into an account invested in U.S. government bonds; earnings in those accounts accrue tax free. The program is available to individuals with annual household incomes up to $191,000 whose employers elect to participate. U.S. Senator Tom Harkin has also introduced legislation to establish USA Retirement Funds (for Universal, Secure, and

Adaptable). These accounts would be (1) available to all employees through payroll deductions; (2) pooled; and (3) professionally managed.

State Fiscal Effect: The bill specifies that all operating costs for the trust and program must come from trust assets. The bill does not specify how start-up expenses for the board and trust are paid for until there are sufficient assets available to pay expenses; presumably, private funds would be raised. Therefore, the State has no direct role in implementing or funding the bill's provisions.

However, two State agencies have defined 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, which are designed and developed by the board, 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 about 60.1 cents per notice, initial employer notification costs are $56,245. 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 IRS approval be secured before the program can be implemented, it is assumed that implementation begins no sooner than fiscal 2017. SRA has advised in the past that IRS approval can take at least two years.

Therefore, general fund expenditures by the Comptroller's Office increase by $356,402 in fiscal 2017, which accounts for the delayed implementation of the bill in fiscal 2017 pending IRS approval. This estimate reflects the cost of hiring two revenue specialists, one field auditor, and one tax consultant to monitor compliance with the bill and calculate and collect penalties as specified by the bill. It includes salaries, fringe benefits, start-up costs, including for employer notifications, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	$276,026
One-time Employer Notifications	56,245
Other Operating Expenses	24,131
Total FY 2017 State Expenditures	**$356,402**

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: SB 921 (Senators Rosapepe and Madaleno) - Budget and Taxation and Finance.

Information Source(s): Comptroller's Office; Department of Labor, Licensing, and Regulation; Maryland State Retirement Agency; Boston College; U.S. Department of Labor; U.S. Census Bureau; California State Legislature; *Business Week*; U.S. Senate Committee on Health, Education, Labor, and Pensions; Department of Legislative Services

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