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April 17, 2017

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: *Senate Bill 664 – Correctional Officers’ Retirement System – Membership*

Dear Governor Hogan:

We have reviewed for constitutionality and legal sufficiency Senate Bill 664 – “Correctional Officers’ Retirement System – Membership.” We can hereby approve Senate Bill 664 for constitutionality and legal sufficiency. We write to advise you of pending federal regulations that could impact the bill’s application.

Senate Bill 664 makes individuals in the following job classifications members of Correctional Officers Retirement System (“CORS”) as a condition of employment on or after 7/1/17: alcohol and drug counselors, certain mental health professionals, social workers, and recreation officers. Also, the bill allows these individuals to retire with a combined 20 years of service in the Employees’ Pension System (“EPS”) and CORS.

The Internal Revenue Service has issued proposed regulations on the definition of normal retirement age. 81 Fed. Reg. 4599 (January 27, 2016) (to be codified at 26 C.F.R. § 1-401(a)-1). CORS permits retirement after 20 years of service without regard to age. If the IRS proposed regulations are adopted, employees holding the job classifications named in Senate Bill 664 will not be eligible for the governmental safe harbors established by IRS for public safety officer. Moreover, the use of EPS service to determine retirement eligibility in CORS could render the safe harbor unavailable.

The proposed federal regulations provide guidance regarding whether the normal retirement age under a governmental plan satisfies the requirements of section 401(a) of the IRS Code, and set forth safe harbors by which a governmental plan can use to comply with the normal retirement age requirements. The correctional officers in the CORS most likely qualify for the public safety safe harbors in accordance with the proposed

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regulations. Therefore, a normal retirement age of 55 and 10 years of service or any age with at least 20 years of service is likely acceptable for correctional officers in CORS. *See* §1.401(a)-1(b)(2)(v)(H).

The job classifications added to CORS by Senate Bill 664, however, do not satisfy the definition of qualified public safety employees under IRS Code § 72(t)(10). Therefore, unless the proposed federal regulations are substantially changed, employees holding these job classifications will not be eligible for the public safety safe harbor. This means that, as to these employees, the normal retirement age for CORS will not comply with the federal regulations. An additional issue presented by this bill is that it permits these employees to become eligible to retire from CORS based upon a combination of service credit earned in the EPS and CORS. The public safety safe harbor will not be available for service credit earned in the EPS that was not earned while employed as a qualified public safety employee.

The proposed federal regulations state that the final regulations will be effective for employees hired during plan years beginning on or after the later of (1) January 1, 2017, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after 3 months after the final regulations are published in the Federal Register. Therefore, if the proposed federal regulations are finally adopted, consideration will need to be given to possible plan amendments to CORS. However, based on the language in the proposed federal regulations, any such amendments can be prospective as to new hires after the effective date.

Sincerely,



Brian E. Frosh
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Warren Deschenaux