Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1001 (Senators Peters and Rosapepe)

Budget and Taxation and Finance Economic Matters

Employee Benefits – State Employee and Retiree Health and Welfare Benefits Program and Maryland Small Business Retirement Savings Program

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This bill makes the Maryland Small Business Retirement Savings Board a body politic and corporate and an instrumentality of the State that is subject only to specified State laws affecting governmental units. The bill clarifies the types of retirement savings programs that employers may offer in order to qualify for an exemption from the State's business filing fee, makes the board eligible to participate in the State Employee and Retiree Health and Welfare Benefits program (the State plan) as a satellite organization, authorizes eligible employees of the board to participate in the State's supplemental retirement plans, and makes other changes to the board's authority. It also requires the Secretary of Budget and Management to make ongoing determinations regarding eligibility for the State plan. **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: The bill does not materially affect State governmental operations or finances, as discussed below.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The board is subject to (1) the Open Meetings Act; (2) the Public Information Act; and (3) the Public Ethics Law.

If the board elects to participate in the State plan as a satellite organization, it must pay to the State the total costs resulting from the participation of its employees and a monthly administrative fee determined by the Secretary of Budget and Management. It must also determine the extent to which the board will subsidize the participation of its employees in the State plan.

The Secretary of Budget and Management must make ongoing determinations of eligibility for the State plan to ensure that participation by satellite organizations does not impede, undermine, or conflict with federal compliance obligations or government and cafeteria plan status.

In order to qualify for an exemption from the State's annual filing fee for corporations and other business entities, an employer must either participate in the board's program or offer any of the following savings arrangements to eligible employees:

- an Individual Retirement Account (IRA);
- a defined benefit plan;
- a 40l(k);
- a Simplified Employee Pension plan;
- a Savings Incentive Match Plan for Employees plan; or
- another arrangement that the board specifies by regulation and that complies with federal law.

An appointing authority of the board may remove a member of the board, whom the authority appointed, for incompetence or misconduct.

The board must annually review its written statement of investment policy. It is authorized (instead of required) to procure insurance against any loss in connection with its property, assets, or activities. It also may evaluate and establish a process by which a noncovered employer or a self-employed individual may enroll in and make contributions to a program established by the board.

Current Law:

Maryland Small Business Retirement Savings Program and Board

Chapters 323 and 324 of 2016 established the Maryland Small Business Retirement Savings Program and Trust and required specified private-sector employers to make the program available to their employees. After the program becomes operational, employers who participate in the program or otherwise offer to their employees (1) an automatic enrollment payroll deduction IRA; (2) an individual retirement annuity; or (3) other employer-offered savings arrangement that complies with federal law are exempt from the

State's annual filing fee for corporations and business entities. The annual filing fee is $300 for most employers. The program may not be implemented until the board obtains an opinion from legal counsel or from the federal government that its plan, trust, administrative arrangement, and investment offerings qualify for favorable federal income tax treatment under the Internal Revenue Code.

The program consists only of one or more payroll deposit IRA arrangements. Unless otherwise specified by the employee, a participating employee contributes a fixed percentage or dollar amount of the employee's salary or wages to the program. By regulation, the board must set and may adjust the default employee contribution. The assets in a participating employee's account are the property of the employee.

The Maryland Small Business Retirement Savings Board administers the trust and the program. The board has 11 members, 2 of whom are ex officio; the Governor, President of the Senate, and Speaker of the House each appoint 3 members, who serve staggered terms. The Governor (not the respective appointing authorities) may remove a member of the board for incompetence or misconduct. 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 0.5% 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 law and (2) establish a written investment policy that includes a risk management and oversight program, as specified in law. The board must also enter into an agreement delegating the administration of the trust to a third-party administrator.

"Covered employers" are nongovernmental for-profit and nonprofit employers in the State that (1) pay employees through a payroll system or service; (2) have been in business for at least the last two years; and (3) do not currently offer, or have not offered in the previous two years, an employer-offered savings arrangement.

Employers may elect to establish alternative savings arrangements for their employees rather than participate in the program; participation in the program does not create a fiduciary obligation of the employers who do so. Specifically, employers are not liable for an employee's decision to participate or to opt out of the program or for their investment decisions, and they are not responsible for program design, administration, investment, or performance.

Generally, "covered employees" are those without access to an employer-sponsored retirement plan; they must also be at least age 18. After the board opens the program for enrollment, covered employers must establish a payroll deposit retirement savings arrangement that allows employee participation in the program. All covered employees must be automatically enrolled in the program by their covered employers, unless the employees have opted out; employees who have opted out may later enroll in accordance with procedures established by the board. Employees of nonparticipating employers may elect to participate in the program as authorized by the board. Any participating employees may terminate their participation at any time in a manner prescribed by the board.

State Health Plan

The State health plan is a self-insured plan covering all units in the Executive, Judicial, and Legislative branches of State government. It must include the health insurance benefit options established by the Secretary of Budget and Management; it does not include any pension benefits.

Retirees of the State may continue to participate in the State health plan if they receive a State pension and meet other specified criteria.

Certain qualifying nonprofit organizations may also participate as satellite organizations. They include (1) an organization that receives State funds from the Maryland Department of Health that cover more than one-third of the organization's operating expenses; (2) the Legal Aid Bureau, Inc., or specified entities wholly owned by the Legal Aid Bureau, Inc.; or (3) the Maryland Crime Victims' Resource Center. The organizations must pay to the State plan a premium and any administrative costs as determined by the Secretary of Budget and Management. A qualifying not-for-profit organization must determine the extent to which the organization will subsidize participation by its employees in the State plan. Employees of non-State organizations and entities that participate in the State plan may not receive State subsidies.

State Laws Governing Governmental Units

Maryland's Public Information Act (PIA) establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated. Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

Under Maryland's Open Meetings Act, with limited exceptions, a "public body" must (1) provide reasonable advance notice of the time and location of meetings, including whether any portion of the meeting will be in closed session and (2) meet in open session in a location that is reasonably accessible to attendees. A public body is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the local boards of education and the Maryland State

Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision.

The Maryland Public Ethics Law sets minimum ethical standards for the conduct of State and local business and requires certain government officials and employees to disclose their financial affairs in order to addresses potential or actual conflicts of interest.

Background: The board has met regularly since it was appointed in 2016, but the program is not yet operational. The fiscal 2018 budget provided $404,000 to the board, and the fiscal 2019 budget includes $899,000 for the board's operating costs. On April 16, 2018, the board announced the hiring of its first executive director, but the board has no current plans to hire additional staff.

State Fiscal Effect: Most of the bill's provisions are clarifying, procedural, or technical in nature. However, the authorization for the board to participate in the State plan has the potential to increase State expenditures negligibly. Statute requires that satellite organizations pay the premium and administrative costs that cover their participation in the plan. However, the Department of Budget and Management advises that, since the plan is self-insured, any claims costs that exceed the premium payments by the employer become the obligation of the State. Even so, since the board has only one employee and does not anticipate hiring additional employees in the foreseeable future, the board's participation in the State plan is not expected to have a material effect on State expenditures. As the program grows and hires more staff in the future, there is a limited potential for State expenditures to increase in the future, but most costs are expected to be covered by the premiums paid by the board. There is no additional State cost attributable to allowing eligible board employees to participate in the supplemental retirement plans since they are funded by fees paid by participating employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Treasurer's Office; Maryland Small Business Retirement Savings Board; Department of Budget and Management; Department of Legislative Services

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