HOUSE BILL 1230

STATE PRESCRIPTION DRUG BENEFITS - RETIREES

House Appropriations Committee
March 10, 2020

Testimony of
Peta N. Richkus,
retired State employee
MD Secretary of General Services, Jan 1999 – Jan 2003
Commissioner, Port of Baltimore, MD Port Administration, Jul 2008 – Jan 2014

Recommended: Favorable

House Bill 1230 should receive a favorable report, thus reinstating the earned prescription drug benefit for Medicare-eligible retirees hired before July 1, 2011.

The preliminary injunction in the ongoing court case (*Fitch, et al v. State of Maryland, et al*) does **not** preclude the General Assembly from remedying the State's attempt to breach its promise of prescription drug benefits to its Medicare-eligible retirees. It only stops the State from ending the promised prescription drug benefit – or from substituting the provisions of last year's SB946 – until the litigation reaches a conclusion.

The September 2018 injunction was imposed by the United States District Court for the District of Maryland because Senior U.S. District Court Judge Peter J. Messitte found:

> *that it was in the public interest, when in this kind of situation, benefits such as prescription drug benefits can be terminated* ***even after employees have met all the creditable service requirements to participate in the Health Program****; and that there was sufficient showing by the Plaintiffs that a contract existed,*[1] *and*
>
> *that* ***the Plaintiffs may prevail on the merits*** *regarding a breach of contract claim based not only on the language of the statute but also by common law principles of contract.*[2]

In compliance with GASB principles and in fairness to 45,000+ state retirees, the State should move to keep retirees in the present retiree prescription drug program.

I respectfully urge the Committee to give HB1023 a favorable report.

---

[1] PJM-18-2817, Document 30, Transcript of October 10, 2018 Proceedings, 12; 5-9.
[2] 4 PJM-18-2817, Document 30, Transcript of October 10, 2018 Proceedings. Pg. 23:21-25; Pg. 24; 1-6.

What follows is some factual and historical information for Committee members' consideration.

The issues of retirees' benefits, the State's unfunded Other Postemployment Benefit (OPEB) liability, and Maryland's bond rating should not be conflated.

1. The rating agencies have never downgraded a state's bonds based solely on an unfunded OPEB liability; and

2. States with greater OPEB liabilities than Maryland have continued to maintain their triple-A bond ratings - namely, Georgia ($18 billion unfunded liability), North Carolina ($33 billion unfunded liability), and Texas ($88 billion unfunded liability). (In July 2018, the State's net OPEB liability was $10.7 billion; the total OPEB liability, $11.1 billion.)[3]

The principal and substantial cause of the worrisome unfunded OPEB liability is the State's own consistent failure to make the necessary contributions to its OPEB Trust fund.

In 2004, under then-new Government Accounting Standards Board (GASB) standards, the State was required to set up an OPEB trust fund, but it has **never** met the annual required contribution specified under GASB. Indeed, the few contributions that have been made have been woefully insufficient. Maryland's unfunded OPEB liability reflects this significant deficiency in the amount contributed to the Trust. If the State had made the required contributions, the unfunded liability would be much less, in the tolerable range, and the funded liability level - now only 3 % - would be much greater, more sustainable, and more in line with bond rating agencies' targets.

In its own analysis, the Department of Legislative Services (DLS) of the Department of Budget and Management states:

> *The State has not met the commission's recommendation regarding payments to prefund the OPEB liability. The State provided payments from fiscal 2007 to 2009 <u>but eliminated payments in fiscal 2010</u> for budgetary reasons.* ***The State has not provided OPEB liability payments since fiscal 2010.*** *In fiscal 2018, the State's net OPEB liability was $10.6 billion, representing a funded ratio of 3% ($329.3 million in assets).* ***If, today, the State started prefunding the OPEB liability on an annual basis, then the liability would decrease to $6.5 billion.*** *However, this would require the State to pay approximately $127 million in addition to annual benefit costs.*[4] (Emphasis added.)

It's worth knowing that $127 million would represent only about 0.27% of the State budget (based on FY2020).

---

[3] DLS Fiscal and Policy Note on the First Reader of SB946, http://mgaleg.maryland.gov/2019RS/fnotes/bil_0006/sb0946.pdf, retrieved 3/17/2019.

[4] F10A02, Personnel budget (p. 16).

The inescapable conclusion is that it has been the lack of State funding of the OPEB Trust that has led to the large unfunded liability. **Then the State used the unfunded liability *that it created* as the rationale for removing retirees from their prescription drug plan,** the plan that they were promised and to which they have contribute. for 20, 30, 40 years and more.

Retirees saved and built their retirement plans on the basis of what they were told by the State. The State then moved to rob them of what is basically a type of deferred compensation – earned but not yet claimed.[5] Of course retirees remain more than concerned: they are outraged. And afraid.

The original GASB guidance included significant relevant language that should be – and should have been – considered:

> *"In a cost-sharing pension or OPEB, the participating employers pool their benefit obligations and assets. In addition to providing administrative services, **the plan assumes from the individual employers the responsibility to fund promised benefits**. In exchange, the individual cost-sharing employees incur liabilities to the plan for the contractually required contributions assessed to them by the plan as their share of the aggregate funding requirements for specified periods."*[6] *(Emphasis added.)*

Of particular note: the oft-cited GASB made its position on funding OPEB liabilities exceedingly clear:

> ***"…** the GASB believes that a government has **an obligation to pay** OPEB based on the level of retirement benefits promised to an employee in exchange for his or her services**."***[7]

This is what retirees had a right to expect. The State did not tell them otherwise. Please also remember that approximately 40% of the cost of the retirees prescription drug program is paid for by them plus federal reimbursements to the State.

There is no question that the right and moral thing to do is to reinstate retirees' prescription drug. Please start the process by giving HB 1230 a "favorable" report.

---

[5] Deferred compensation is an arrangement in which a portion of an employee's income is paid out at a later date, after the income was earned. Examples of deferred compensation include pensions, retirement plans, and employee stock options. https://en.wikipedia.org/wiki/Deferred_compensation, retrieved 3/6/20.

[6]GASB Staff Technical Bulletin, "Recognition of Pension and Other Postemployment Benefit [OPEB] Expenditures/Expense and Liabilities by Cost-Sharing Employers"- December 2004. https://www.gasb.org/jsp/GASB/GASBContent_C/GASBNewsPage&cid=1176156739075, retrieved 3/17/18. 2/17/19.

[7] https://www.gasb.org/jsp/GASB/Page/GASBBridgePage&cid=1176164129754#section_3, retrieved 2/17/19.