



STATE RETIREMENT AGENCY
120 East Baltimore Street
Baltimore, MD 21202-6700

MARYLAND
STATE RETIREMENT
and PENSION SYSTEM

410-625-5555 • 1-800-492-5909
TTY Users: call via Maryland Relay
sra.maryland.gov

**Testimony for House Bill 778
Correctional Officers' Retirement System – Membership**

**House Appropriations Committee
February 27, 2020
1:00 P.M.**

**Anne Gawthrop
Director of Legislative Affairs
State Retirement Agency**

The Board of Trustees for the State Retirement and Pension System (System) wishes to express its opposition to House Bill 778, Correctional Officers' Retirement System – Membership.

House Bill 778 requires the following employees of the Department of Juvenile Services who are members of the Employees' Retirement System (ERS) or the Employees' Pension System (EPS) to be moved into the Correctional Officers' Retirement System (CORS) on July 1, 2020:

- (1) a residential group life manager;
- (2) a youth center cook or cook lead;
- (3) a food service worker or supervisor; or
- (4) a maintenance assistant, chief, mechanic, mechanic senior, or supervisor.

This proposed legislation provides that any individual hired on or after July 1, 2020, in one of these stated positions will be required to join the CORS as a condition of employment. Current ERS and EPS members serving in these positions will have until June 30, 2021, to transfer their ERS and EPS service credit into the CORS. The bill also provides that the Agency shall notify each of these individuals by January 1, 2021 of their transfer rights under this bill.

The technical definition for "normal retirement age" as provided for by the Internal Revenue Service (IRS) states that it is "the age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed." In January 2016, the IRS issued proposed regulations that address the definition of normal service retirement age for qualified governmental pension plans, specifically addressing normal retirement age for public safety officers to include federal correctional officers. Tax counsel for the System believes that members of the CORS, employed as correctional officers, would be found to meet this definition. However, we did want to alert the Committee to potential issues that may arise with regard to the members of the CORS who are not correctional officers, if these proposed regulations are enacted.

BOARD OF TRUSTEES

Nancy K. Kopp, *Chairman*
David R. Brinkley
Eric D. Brotman
Jamaal R. A. Craddock

Kenneth B. Haines
David B. Hamilton

Linda A. Herman
Sheila Hill

F. Patrick Hughes
Charles W. Johnson

Peter Franchot, *Vice Chairman*
Richard E. Norman
Douglas Prouty
Michael J. Stafford, Jr.

R. Dean Kenderdine, *Secretary to the Board*

The IRS proposed regulations provide that a normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable and a normal retirement age lower than age 65 represents the age at which employees customarily retire in the industry. Additionally, the proposed regulations included several sets of safe harbors which would allow for a normal service retirement age lower than age 65, with specific safe harbors for qualified public safety employees. For these employees, the proposed safe harbors are:

- age 50;
- combined age and years of service totaling 70 or more; or
- any age with 20 years of service.

Section 72(t)(10)(B) of the Internal Revenue Code defines a qualified public safety employee as any employee of a State or political subdivision of a state who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such state or political subdivision. Additionally, while § 72(t)(10)(B) does not specifically include correctional or detention officers of state or local political subdivisions, it does include federal correction/detention officers in its definition of qualified public safety employees. Currently, members of the CORS may retire after 20 years of service, regardless of age. We believe this provision will likely satisfy the service-based safe harbor for qualified public safety employees (the CORS members employed as correctional officers) under the proposed normal service retirement age regulations.

In 2018, legislation was introduced that attempted to move the same positions included in House Bill 778 into the CORS. At that time, the System's tax counsel reviewed the job descriptions for these positions and expressed concern over moving this group of positions into the CORS. Based on this advice from the System's tax counsel, we informed the Committee in 2018, that we believed this group would not satisfy the IRS definition of a qualified public safety employee under the I.R.C. § 72(t)(10)(B). Moreover, based on the 2018 advice from the System's tax counsel, we also expressed concern that providing these individuals employed in these positions with a normal retirement at any age with 20 years of service was not consistent with the normal retirement at which other equivalent positions (other non-qualified public safety employees) customarily retire in the industry. Accordingly, we stated in our testimony that permitting individuals employed in these positions to receive a normal retirement after accruing 20 years of service, regardless of age, would violate the I.R.S. proposed regulations addressing normal retirement age. The concerns raised in 2018 remain true today. Therefore, until the IRS provides further guidance regarding the Normal Retirement Age Regulations for Governmental Plans, adding employees to the CORS who do not meet the definition of "qualified public safety employees," will present tax qualification issues for the System because such employees would be entitled to the CORS retirement with 20 years of service, even though such retirement would violate the IRS proposed regulations.

We appreciate being given the opportunity to raise these issues with the Committee and stand ready to provide any further information or services the Committee might request.