



# Maryland

DEPARTMENT OF BUDGET  
AND MANAGEMENT

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## **HOUSE BILL 379 State Employee and Retiree Health and Welfare Benefits Program - Eligibility for Enrollment and Participation (Korman)**

### **STATEMENT OF INFORMATION**

**DATE: February 15, 2022**

**COMMITTEE: House Appropriations**

**SUMMARY OF BILL:** HB 379 authorizes the employees of the Maryland Agricultural and Resource-Based Industry Development Corporation, the Maryland Clean Energy Center, and the Bainbridge Development Corporation to enroll and participate in the health insurance benefit options established under the State Employee and Retiree Health and Welfare Benefits Program, if the Secretary of the Department of Budget and Management determines the entity is eligible to participate in the Program. The entities pay to the State the total costs resulting from participation and determine the extent to which the entity will subsidize participation of its employees in the Program. The Secretary has 30 days from the July 1, 2022 effective date of the Act to make a determination.

**EXPLANATION:** Entities seeking admission to the State Employee and Retiree Health and Welfare Benefits Program must apply through the formal application utilized by the Employee Benefits Division. The formal application and supporting materials facilitate the necessary legal review to ensure compliance with all statutes governing employee benefit plans.

The Secretary of the Department of Budget and Management (DBM) has broad authority for administration of the State Employee and Retiree Health and Welfare Benefits Program (Program) and responsibility for ensuring the Program complies with all federal and State laws governing employee benefit plans under State Personnel & Pensions Article, Section 2-502, 2-503.

In order to carry out the Secretary's fiduciary duty to protect the State's health plan, governmental plan status, cafeteria plan status, and federal compliance obligations, DBM, in consultation with legal counsel, makes determinations as to which entities may participate in the State plan on a case-by-case basis. Legal analysis and determinations follow the Internal Revenue Service (IRS) guidance on governmental plan status, which sets forth criteria for determining whether an entity is an agency or instrumentality of a state. DBM, through advice of counsel, carefully and holistically considers each entity within the context of its duty to make eligibility determinations "to ensure that participation in the Program does not impede, undermine, or conflict with federal compliance obligations or government and cafeteria plan status." State Personnel & Pensions Article, Section 2-503(a)(4). Extending coverage to individuals who are not employed by a governmental entity puts the Program at risk of losing its governmental plan status.

The consequences of losing the State's governmental plan status are exceedingly burdensome, exposing the Program to onerous and costly reporting, disclosure and administrative requirements. Further, any changes to its structure as a cafeteria plan could impact the preferential pre-tax benefits for enrolled employees.

Past experience demonstrates that it would be very difficult for outside counsel to render a legal opinion on the eligibility of three entities within 30 days. It normally takes several weeks to obtain a legal opinion for one entity because of the questions and factual exchange that is required. DBM respectfully requests the 30-day requirement for the Secretary to make a determination be amended to 60 days.

**For additional information, contact Barbara Wilkins at  
(410) 260-6371 or [barbara.wilkins1@maryland.gov](mailto:barbara.wilkins1@maryland.gov)**