SB 477

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 477 (Senator Jones-Rodwell)(Chair, Joint Committee on Pensions)

Budget and Taxation

State Retirement and Pension System - Employment of Retirees - Required Break in Service

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This bill prohibits a retiree of the State Retirement and Pension System (SRPS) from being reemployed with *any* participating employer within 45 days of the individual's retirement.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: No effect on State pension liabilities or contribution rates. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: In general, an SRPS retiree who is receiving a retirement allowance from the system may be reemployed. However, if the individual is reemployed with the same employer from which the individual retired, State law requires at least a 45-day break in service between the individual's retirement and the reemployment. For the purpose of determining a break in service, all branches and agencies of State government are considered a single employer. The 45-day break in service does not apply if the individual is reemployed with a different participating employer (for instance, if a teacher retires from one county school system and begins teaching in another county school system).

Background: The break-in-service provisions were added to the Maryland Annotated Code to protect the system's tax-exempt status under the federal Internal Revenue Code (IRC) and to protect retirees from a 10% premature distribution tax under IRC. The federal Internal Revenue Service (IRS) requires a bona fide break in service for individuals who receive a retirement allowance; although IRC does not specify a number of days that represent a bona fide break in service, case law and IRS correspondence have identified 45 days as sufficient. In light of recent rulings and IRS letters, SRPS tax counsel advised that additional restrictions be added to the law to more clearly distinguish a separation from employment before a retiree is reemployed.

Also, individuals who begin receiving retirement allowances before age 59.5 are subject to a 10% premature tax distribution if they cannot show that there has been a clear separation from employment. An individual who retires from one participating employer and begins employment with another participating employer with less than a 45-day break in service may not be able to show a clear separation from employment and, therefore, may be subject to the tax.

Additional Information

Prior Introductions: None.

Cross File: HB 494 (Delegate Griffith)(Chair, Joint Committee on Pensions) - Appropriations.

Information Source(s): Department of Budget and Management, Maryland State Retirement Agency, Department of Legislative Services

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