

Overview of Optional Membership for Elected and Appointed Officials in the Employees' Pension System

Chapter 636 of 2014 charged the State Retirement Agency with studying the issue of the optional membership for elected and appointed officials in the Employees' Pension System. This report provides an historical overview of the optional membership provision as it evolved in State pension law to its current posture. In addition, the State Retirement Agency concludes this report with recommendations regarding the future of optional membership for elected and appointed officials.

During the 1939 legislative session, the Board of Trustees for the State Employees' Retirement System submitted recommendations to the General Assembly addressing the "advisability of creating a permanent and sound retirement system" for employees other than teachers. (The Teachers' Retirement System had been established in 1927.) In 1941, the recommendations of the Board were enacted through Chapter 377. This Act established Article 73B of the Annotated Code of Maryland, entitled "Pensions."

From the outset in 1941, § 3(5) of Article 73B stated that "membership in the retirement system shall be optional with any class of elected officials, or with any class of officials appointed for fixed terms." Chapter 793 of 1945 added more direction to the optional membership language. The amendments to § 3(5) state, in part:

Such elected or appointed officials now in office may become members of the Employees' Retirement System by making application for such membership within six months after June 1, 1945. All officials hereafter elected or appointed may become members of the System upon making application therefor within six months after their election or appointment. All such officials shall be entitled to credit for prior service rendered by them to the State, including service rendered prior to the establishment of the Employees' Retirement System.

It would appear from these amendments that the legislature intended to maintain that membership would be optional for elected and appointed officials; but that the period of time they would have to elect to join the Employees' Retirement System (ERS) would now be restricted to six months from the date of their election or appointment. In addition, it is important to keep in mind that at this time vesting in the ERS was 20 years, making it nearly impossible for an elected or appointed official to earn a benefit in this system.

Section 3(5) of Article 73B remained virtually unchanged until 1959 when Chapter 805 of 1959 amended it to extend the period of time an elected or appointed official would have to elect to join the ERS from six months to 12 months after the official's election or appointment. Chapter 805 also included amendments that would allow officials to receive prior service credit rendered by them to a political subdivision of the State. In 1961, Chapter 107 again expanded the time period when an official could elect to join the ERS to provide that such an election needed to be completed at any time "before the expiration of their respective terms."

Following the enactment of Chapter 107 of 1961, several amendments were made to § 3(5) over the next 10 years. Membership remained optional for all elected and appointed officials, although the clarification that the appointments "for a fixed term" was repealed. Optional membership was expanded to include employees of the Governor's office and desk officers or other employees of either house of the General Assembly who receive an annual salary as compensation of such employment and who were considered to be an appointed official within the application of § 3(5). Also during this 10-year period the reference to officials receiving credit in the ERS for prior service rendered by them to a "political subdivision" was changed to "participating municipal corporation." This change would suggest that the legislature recognized that elected and appointed officials of participating governmental units were now facing the choice of whether to enroll in the ERS. Further amendments were made to § 3(5) during this period of time detailing the responsibilities of the participating municipal corporations with regard to any transfer of the funds necessary to cover the costs of prior service if an official chose to receive credit for the official's prior service with the municipal corporation.

Over the next 30 years (1970-2000), very few substantive changes were made to the optional membership provision. By 1980, § 3(5) of Article 73B was revised and moved to § 113(3) of Article 73B. Membership remained optional for elected and appointed officials, but the time period the official had to elect membership was removed entirely. Between 1980 and 2000, the only substantive change was to extend optional membership to members of the Prince George's County Board of Alcoholic Beverages License Commissioners, employees of participating governmental units who are employed by the participating governmental unit on the effective date of its participation in the State systems, and employees of Dorchester County who are not members of Dorchester County's general pension and retirement program. Beyond those additions, no further changes were made to the optional membership provision. Also during this period of time, the optional membership provision was moved to § 23-204 of the State Personnel and Pensions Article.

In 2000, both Kent County Board of Education and the Town of Oakland joined the Employees' Pension System (EPS) and sought legislation amending § 23-204 to make membership mandatory for individuals who were existing employees of each participating governmental unit on their effective dates of participation (Chapters 458 and 474 of 2000, respectively). According to the fiscal notes on each of those bills, both Kent County Board of Education and the Town of Oakland sought to modify the existing optional membership provision for existing employees of newly-participating governmental units joining the EPS out of concern that if one of their existing employees opted not to participate in the EPS, that individual would receive no pension at all, because the local plans would be terminated.

Chapter 532 of 2004 brought the first major change to optional membership since its inception in 1941. Chapter 532 was legislation sponsored by the Joint Committee on Pensions at the request of the Board of Trustees for the State Retirement and Pension System. Provisions of this bill included restricting optional membership to individuals who were employed within the existing groups previously included in § 23-204, if those individuals were employed in those positions on June 30, 2004. For example, existing elected and appointed officials who were serving in their respective positions on June 30, 2004 would continue to have the option to join

the EPS; however, any individual becoming an elected or appointed official on or after July 1, 2004, would be required to join the system. Testimony for the Board stated that it believed membership had been optional in the past due to the onerous vesting requirements (again, at one point, it was as great as 20 years), making it almost impossible for individuals in these positions to earn a benefit from the ERS or EPS. That being said, in 2004, an EPS member was required to accrue only five years of eligibility service to vest in the system. Because EPS members can earn a year of eligibility service for any fiscal year in which they work 500 hours, it was possible at that time for elected and appointed officials to accrue five years of eligibility service during four calendar years and be vested after serving one term of office. Moreover, the Agency noted that requiring these individuals to join the EPS would ensure they were protected with disability and death benefits.

Following this major departure, Chapter 627 of 2006 provided a slight exception to mandatory membership. Chapter 627 stated that membership in the EPS would be optional for the Sheriff of Baltimore City, but also provided that if the Sheriff did not elect to join the EPS within six months of taking office, the Sheriff would be enrolled in the Law Enforcement Officers' Pension System as a condition of employment. In addition, Chapter 239 of 2006 clarified that employees of the City of Frostburg, similar to employees of the Kent County Board of Education and the Town of Oakland, would all be required to join the EPS regardless of whether they were employed by the City of Frostburg on or before June 30, 2004.

The small exception established through Chapter 627 of 2006 was expanded through provisions of Chapter 334 of 2007, again making membership in the EPS optional for elected and appointed officials under limited circumstances. Chapter 334 (Senate Bill 515) provided that elected or appointed officials would have one year from election or appointment to join either the Employees' Pension System or another retirement or pension system operated under the laws of the State or a political subdivision of the State. However, if there was not a second system in which these officials could enroll, membership would be mandatory in the EPS.

From 2008 through 2014, various bills were introduced on behalf of participating governmental units that joined the SRPS during that period of time. The Town of University Park (Chapter 632 of 2009) and the Town of Sykesville (Chapter 413 of 2009) had legislation enacted to ensure that membership in the EPS was mandatory for all of the employees of each of the towns, regardless if any of the employees were employed on the effective date of participation and also employed on or before June 30, 2004. Conversely, the Town of Berwyn Heights (Chapter 171 of 2008) and the City of College Park (Chapter 635 of 2014) had legislation enacted to provide optional membership in the EPS to all current employees of the Town and City, employed by the entities prior to the effective date of participation.

Finally, the most recent piece of legislation enacted that amended § 23-204 was Chapter 636 of 2014. This legislation provided optional membership for various appointed officials of Prince George's County.

A review of the legislation enacted since the passage of Chapter 532 of 2004 requiring mandatory membership for all elected and appointed officials, would suggest local governments would prefer a return to optional membership for their elected and appointed officials. This is

supported by the fact that the argument to move to mandatory membership because vesting had been reduced from 20 years to 5 years over the period of time optional membership had been in place, is no longer relevant. With a return to longer vesting (10 years), local elected and appointed officials now have to serve two and one-half terms before becoming eligible for retirement. Moreover, there may be towns and municipalities participating in the SRPS that have two year terms of office for their elected and appointed officials, which in turn would make vesting even more cumbersome.

In addition, these individuals are required to contribute 7% of their annual salary toward a benefit for which they may not become eligible. The employers for local elected and appointed officials have also expressed concern that they will be required to make employee contributions on behalf of these individuals. Yet, unlike the non-vested member who may receive a return of the member's accumulated contributions at the time the member stops serving as an elected or appointed official, the employer will not receive a return of employer contributions made on behalf of this individual.

In light of these concerns that have been raised by both local elected and appointed officials and their employers, staff for the State Retirement Agency would recommend amending § 23-204 of the State Personnel and Pensions Article to more closely reflect the wording of the original optional membership statutes during the period from 1941 through 1961. During that period of time, membership was optional for "any class of elected officials, or with any class of officials appointed for fixed terms." Language similar to this, or perhaps with even more specific identifying criteria, would provide the Agency with guidance in determining whether an individual is, in fact, an appointed official.

Additionally, staff would also recommend similar language from the first versions of the optional membership provisions that placed a statute of limitations on the period of time during which an elected or appointed official could elect membership in the EPS. Initially this period of time was six months but was later extended to 12 months from the date of taking office. A 12-month statute of limitations to elect to join the EPS would be consistent with the period of time the legislature provided members to elect to join the Teachers' Pension System (TPS) or the Optional Retirement Plan (ORP). Further, stipulating a definite period of time when the election to participate shall be made satisfies the concerns the Agency's tax counsel raise in 2006 when the time constraints were placed on members choosing between the TPS and the ORP.