
**Report on Membership in the Employees'
Pension System for Individuals Employed
Less Than 500 Hours Per Fiscal Year**

**Submitted to the
Joint Committee on Pensions**

**Department of Legislative Services
Office of Policy Analysis
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Background

2014 Study on Optional Membership for Elected and Appointed Officials

Chapter 636 of 2014 charged the State Retirement Agency (SRA) with studying the issue of optional membership for elected and appointed officials in the Employees' Pension System (EPS). Before July 1, 2004, membership in EPS was optional for specified elected and appointed officials; however, Chapter 532 of 2004 made membership mandatory for elected and appointed officials who began serving on or after July 1, 2004.

It appears that the legislature's primary rationale for this action was the five year vesting period for EPS at that time. Section 23-302(c) of the State Personnel and Pensions Article states that if a member completes at least 500 hours of employment while a member in any fiscal year, the member is entitled to one year of eligibility service. Because EPS members can earn a year of eligibility service for any fiscal year in which the member works at least 500 hours, it was possible at that time for an elected and appointed official to accrue five years of eligibility service during four calendar years and be vested after serving one term of office. Additionally, requiring elected and appointed officials to join EPS ensured that they were protected with disability and death benefits.

However, the increase in the vesting period to 10 years for EPS members hired on or after July 1, 2011, would have required most local elected and appointed officials to serve two and one-half terms before the officials would vest. During the 2014 study, SRA's review of the legislation enacted since the passage of Chapter 532 suggested that local governments preferred a return to optional membership for their elected and appointed officials.

2015 Legislation – Optional Membership for Certain Elected and Appointed Officials

Following the 2014 study by SRA, the General Assembly passed Chapter 182 of 2015, which made membership in EPS optional moving forward for most local elected and appointed officials of participating governmental units. However, the legislation clarified that membership in EPS is not optional for any individual employed in a position before July 1, 2015, who was required to be a member of EPS, while the individual remains in that position. As mentioned above, prior to the 2015 change, membership in EPS was mandatory for most elected and appointed officials of participating governmental units who began serving between July 1, 2004, and June 30, 2015.

Study Required by Chapter 281 of 2017

SRA periodically conducts compliance reviews of participating employers to determine if all eligible employees are properly enrolled. Following the enactment of Chapter 182 of 2015, a compliance review of a participating employer noted that, as was the case in a previous review, three Orphans' Court judges employed for the participating employer were identified as not being enrolled in EPS despite meeting eligibility requirements.

The review noted that the three Orphans' Court judges were not enrolled in EPS in anticipation of legislation that would impact their eligibility. However, Chapter 182 affected only the eligibility of officials who were elected or appointed after June 30, 2015. Since each of the three officials identified in the previous review were initially elected before June 30, 2015, their enrollment in EPS is mandatory.

After the review, two of the three Orphans' Court judges were subsequently enrolled in EPS. However, the judges questioned whether they should have been enrolled because they work less than 500 hours per fiscal year. Additionally, the judges were concerned that, despite paying a member contribution, they would not be entitled to a benefit from EPS because working less than 500 hours per fiscal year would result in them failing to accrue any eligibility or creditable service.

In an attempt to address the concerns of the Orphans' Court judges, House Bill 1178 of 2017 was introduced that would have required the Board of Trustees for the State Retirement and Pension System (SRPS), upon request, to review the status of an individual in EPS and determine whether the individual was incorrectly enrolled. If an individual was incorrectly enrolled, the board would have been required to disenroll the individual as soon as practicable.

Section 23-205 of the State Personnel and Pensions Article already requires the board of trustees to determine whether an individual is (or should be) a member of EPS if the eligibility of the individual is unclear. Since the law already requires the board to review the status of an individual in EPS if his or her eligibility is unclear, HB 1178 as introduced appeared to be redundant. However, SRA and Department of Legislative Services (DLS) staff recognized that this issue might require further study. Therefore, HB 1178 (Chapter 281) was amended to require SRA and DLS to conduct a study regarding membership in EPS for individuals who are employed in a position for which the budgeted hours per fiscal year are less than 500 hours and to report their findings and recommendations to the Joint Committee on Pensions on or before December 1, 2017. This report is intended to fulfill that requirement.

The questions that SRA and DLS staff sought to answer during the study were:

- (1) Is it erroneous to require elected and appointed officials who began serving between July 1, 2004, and June 30, 2015 to be enrolled in EPS if the officials work less than 500 hours in a fiscal year?

- (2) Are other categories of employees who work less than 500 hours in a fiscal year required to enroll in EPS?
- (3) If a member of EPS works less than 500 hours per fiscal year, are they able to accrue creditable and eligibility service?
- (4) If it was erroneous to require elected and appointed officials to be enrolled in EPS if they work less than 500 hours in a fiscal year, what remedies are available to these individuals?

For the reasons explained below (1) it is not erroneous to require elected and appointed officials who began serving between July 1, 2004, and June 30, 2015, to be enrolled in EPS if they work less than 500 hours in a fiscal year; (2) other categories of employees who work less than 500 hours in a fiscal year are not required to enroll in EPS; and (3) a member of EPS who works less than 500 hours per fiscal year is able to accrue creditable and eligibility service if they are in a contributory tier of EPS or are reported as full-time employees. Additionally, very limited remedies are available to elected and appointed officials who object to being enrolled in EPS.

Statutory Distinction Between Employees and Officials

Section 23-201(a) of the State Personnel and Pensions Article lists the positions for which mandatory enrollment in EPS is a condition of employment. In subsection (a), paragraph (1) specifies regular State employees, paragraph (2) specifies State elected and appointed officials, and paragraph (3) specifies employees and local officials of participating governmental units (PGU). Section 23-201(b) of the State Personnel and Pensions Article lists the positions to which mandatory enrollment in EPS does not apply. Paragraph (7) specifies an employee who is not already a member of a State system and who accepts a position for which the budgeted hours per fiscal year are less than 500 hours in the first fiscal year of employment.

The plain language of the statute distinguishes between elected and appointed officials and employees; therefore, Section 23-201(b)(7) applies only to employees and not to elected and appointed officials. SRA has interpreted this section in this manner and has required local elected and appointed officials to enroll in EPS if they began serving between July 1, 2004, and June 30, 2015, regardless of the number of hours they work.

SRA cannot pinpoint exactly when this practice originated, but this is a long standing agency practice that dates back prior to the establishment of the Contributory Pension System (CPS) in July 1998. Prior to the establishment of CPS, the pension systems were mostly noncontributory and, with the exception of the first and last year of employment, members working less than 700 hours (now 500 hours) in a fiscal year did not receive service credit. To prevent this inequity for elected and appointed officials, which has also been extended to other groups that work limited hours such as other compensated board or commission members, SRA practice is to instruct the employer to report the individual as a full-time employee. The rationale for this practice is based on the recognition that these elected and appointed officials, unlike employees,

are always on the job responding to constituents, and often work additional hours. Having the employer report elected and appointed officials as full-time employees results in the member receiving full-time service credit using their reported budgeted annual salary.

Categories of Employees Eligible for EPS

Data on employees who work less than 500 hours in a fiscal year who have the potential for membership in EPS was not readily available. Therefore, DLS collected data on State employees and surveyed PGUs, the Maryland Judiciary, the Maryland General Assembly, DLS, Baltimore City Community College, and the public four-year institutions of higher education. The survey asked each unit how many individuals in the unit were employed in a position for which the budgeted hours per fiscal year are less than 500 hours, the position title/position classification of these employees, whether these employees are elected or appointed, and the status of these employees in EPS.

The survey also asked if the unit has received any complaints from individuals who work less than 500 hours regarding their status or lack thereof in the EPS. Additionally, the survey asked the unit what their experience has been in working with SRA regarding the enrollment of employees in the EPS who work less than 500 hours per year. A sample survey can be found in **Appendix 1**.

Survey Findings

Over 70% of the units responded to the survey. The vast majority of units do not have any regular employees who are employed in a position for which the budgeted hours per fiscal year are less than 500 hours. Several of the responses included temporary or contractual employees; however, those categories of employees are not eligible for membership in EPS. **Appendix 2** provides a summary by unit of the regular employees who are employed in a position for which the budgeted hours per fiscal year are less than 500 hours.

Based on the survey responses, over two-thirds of elected and appointed officials are enrolled in EPS, and slightly less than one-third are not. The elected and appointed officials who are not enrolled in EPS likely began serving after June 30, 2015, or otherwise have optional membership in EPS.

One-third of employees working less than 500 hours are enrolled in EPS, while two-thirds of employees are not. SRA indicates that if an employee works more than 500 hours in a fiscal year, the employee is enrolled in EPS; however, the employee is not disenrolled if the employee's hours fall below 500 hours in a subsequent fiscal year.

With the exception of elected and appointed officials, other categories of individuals who are otherwise eligible for membership in EPS are not required to enroll in EPS if they work less than 500 hours in a fiscal year.

Survey Comments

The majority of units said that they have not received complaints from individuals who work less than 500 hours regarding their status or lack thereof in the EPS. A few units have received complaints and some of those responses are shown below:

“The city has not received any complaints from employees working less than 500 hours about their ineligibility to join. Most part-time employees do not want to be enrolled in the pension plans because they do not want to contribute 7% and they do not contemplate working the 10 years to be required to be vested.”(College Park)

“When the library required shelvers to enroll in the State Pension Plan, we did receive complaints from employees regarding required participation in the Pension Plan.” (Frederick County Library)

“Part-time person expressed not being notified when hired that she would participate in the pension system.” (Hagerstown)

“Our employees do not want to be enrolled. They are retirees, students, and others who are working our positions as secondary employment or temporary employment and they want the money. They are not employees who took their positions with us to earn a retirement benefit.” (Kent County Government)

“Employees have expressed concern about the 7% required contribution.” (New Carrollton)

“Other than the elected officials who are required to enroll, we do not enroll employees who work under 500 hours. We occasionally have concerns raised from newly elected county commissioners. However the majority of concerns come from appointed employees who work over 500 hours and are required to enroll in the retirement system. This is especially true now with the 10 year vesting and rule of 90 for retirement coupled with the 7% contribution.” (Queen Anne’s County)

“Yes, employees who are enrolled have expressed concern about being enrolled.” (Somerset County)

“Through grant funding we hire hourly employees. These employees have no budgeted hours and are not included in the full-time employee count. When these hourly employees work more than 500 hours, they express concern about not being enrolled in the Pension System.” (St. Mary’s County Government)

“No one has expressed concern about not being enrolled in EPS. Elected officials who are forced to enroll have expressed concerns that they would rather not be enrolled.” (Sykesville)

“Since Talbot County employs a large percentage of part-time and seasonal workers, it is always time consuming to have them in any way involved in the System. We would prefer not to have them in the system in any fashion as almost without exception, they must be removed and their contributions refunded. This is especially true with the ten-year vesting rule.” (Talbot County)

“The only concerns we hear are from those individuals who are already past normal retirement age that have to participate. We hire many older food service workers and bus drivers who do not want to enroll in their late 60’s, early 70’s.” (Washington County Public Schools)

“There have been no issues enrolling elected officials, but because of the 10-year vesting, there is some reluctance to joining by the prospective member.” (Westminster)

“The board members questioned why they needed to be enrolled, especially after several years of holding a position on the board. They feel it is unnecessary to be enrolled.” (Worcester County Board of Education)

Additionally, the survey asked the unit what their experience has been in working with the SRA regarding the enrollment of employees in the EPS who work less than 500 hours per-year. The majority of units did not respond to this question; however, several responses were positive comments about SRA:

“No problems. SRA staff are always helpful.” (Edmonston)

“Always receptive to questions.” (Kent County Public Schools)

“Good – our questions are answered promptly and thoroughly.” (St. Mary’s County Government)

“There has only been one question for SRA, and it was answered in a timely manner.” (Sykesville)

A few responses noted some issues:

“Confusing!! The retirement agency doesn’t really know how to handle the employees who decrease to less than 500 hours. After many discussions, we made the decision to leave them enrolled if they were initially over 500 hours and decrease.” (Carroll County Public Schools)

“Received fine from SRA for non-compliance of member enrollment; however the elected official failed/refused to complete and return. In interim, the elected official was sent a letter from the Director of Administration asking for the completion of necessary documents and will face withholding of next quarterly compensation if not returned.” (Cecil County Government)

“It has been noted on audits for not picking up the previous time when they become eligible.”(Kent County)

“Following our last audit we were instructed to enroll the Mayor and Council who do not work 500 hours per year. We are currently in the process of enrolling them. Because many of our Councilmembers and Mayor have served for a long time, it raises questions of how far to go back. Fortunately, our Mayor and Council until recently (four years) received a stipend and were not on payroll so it is hoped that our liability will only be for the four years they have been on payroll or their time elected. For small towns who only pay their Mayor and Councilmembers a few hundred dollars a month, I'm not sure if its worth all of the paperwork on anyone's end. As far as working with the State Retirement Agency, they have always been very helpful and easy to work with.” (Landover Hills)

“Only complaint is for employees who were budgeted above 500 hours at one time but no longer are, having to remain enrolled despite their lower wages and less hours.” (Somerset County)

“We have had some difficulty, as our board members are only paid quarterly. The retirement system would send notices of the accounts being inactive since contributions had not been sent. We can only send contributions quarterly.” (Worcester County Board of Education)

Eligibility for Pension Benefit

One of the concerns that led to the introduction of House Bill 1178 of 2017 was the question of whether a member of EPS who works less than 500 hours per fiscal year would accrue any eligibility or creditable service that is necessary to be eligible for a benefit from EPS. With the exception of members who are in the Noncontributory Pension Benefit and who are not reported as full-time employees, a member of EPS who works less than 500 hours per fiscal year is able to accrue eligibility and creditable service.

Except as explained below, members in the Noncontributory Pension Benefit tier of EPS who work less than 500 hours in a fiscal year will not be eligible for a benefit because they do not earn any creditable or eligibility service when they work less than 500 hours in a fiscal year. However, if a member of the Noncontributory Pension Benefit who works less than 500 hours in a fiscal year is reported as a full-time employee, the member will earn creditable or eligibility service. Thus, the SRA practice to instruct employers to report elected and appointed officials as full-time allows these individuals to be eligible for a benefit if they otherwise meet eligibility requirements.

Members in the CPS, Alternate Contributory Pension Selection, or Reformed Contributory Pension Benefit who work less than 500 hours in a fiscal year will be eligible for a benefit from EPS because they earn prorated creditable and eligibility service. **Exhibit 1** illustrates the difference between how service credit is earned in the noncontributory and contributory tiers of EPS.

**Exhibit 1
EPS
Service Credit Accrual Illustration**

Noncontributory Pension Benefit				
Fiscal Year	Hours Worked	Standard Hours	Creditable Service	Eligibility Service
2012	1040	2080	6	12
2013	1040	2080	6	12
2014	1040	2080	6	12
2015	400	2080	0	0
2016	400	2080	0	0
2017	400	2080	0	0
Totals			18	36

Contributory Tiers: CPS, ACPS, and RCPB				
Fiscal Year	Hours Worked	Standard Hours	Creditable Service	Eligibility Service
2012	1040	2080	6	12
2013	1040	2080	6	12
2014	1040	2080	6	12
2015	400	2080	3	10
2016	400	2080	3	10
2017	400	2080	3	10
Totals			27	66

ACPS: Alternate Contributory Pension Section
 CPS: Contributory Pension Benefit
 RCPB: Reformed Contributory Pension Benefit

Note: Creditable service is awarded as (Hours Worked / Standard Hours) x Number of Months Worked in a fiscal year (assuming in above example that employee worked 12 months each year). An individual cannot receive a partial month of service credit; therefore, the product of the calculation is rounded up to the next whole number so that the individual receives credit for the entire month (e.g., 2.3 is rounded up to 3). Eligibility service is awarded as (1) if Hours Worked in a fiscal year are greater than 500 then 12 months awarded (10 months would be awarded for a 10-month employee), or (2) if Hours Worked are less than 500 then (Hours Worked / 500) x 12 months (or x 10 months for a 10-month employee). The applicable service credit values are then used in calculating the benefit.

Source:

Therefore, the Orphans' Court judges would accrue eligibility and creditable service even if they work less than 500 hours per fiscal year for two reasons: (1) the judges are reported as full-time employees; therefore, they earn service credit as a full-time employee; and (2) even if they were not reported as full-time employees, the judges would earn prorated service credit because they are employed with a participating employer who participates in a contributory tier of EPS.

Remedies for Elected and Appointed Officials Enrolled in EPS

As explained above, based on current law, it is not erroneous to require elected and appointed officials to be enrolled in EPS, even if they work less than 500 hours in a fiscal year. However, assuming some elected and appointed officials do not want to be enrolled in EPS, there are very limited remedies available to these individuals.

As noted above, Section 23-205 of the State Personnel and Pensions Article requires the board of trustees to determine whether an individual is (or should be) a member of EPS if the eligibility of the individual is unclear. A member who disputes his or her enrollment may request the board to review the member's eligibility.

If an individual is not already enrolled in EPS, legislation could be introduced that would prohibit the individual, while serving in that position, from being enrolled in EPS. To avoid issues with special laws, the prohibition would need to be a prohibition on individuals serving in the position from being enrolled in EPS, which would result in prohibiting any individual who may subsequently serve in the position from EPS participation.

If an individual is enrolled in EPS, the individual cannot unilaterally choose to disenroll after he or she is enrolled; legislation would be required to provide for disenrollment. Legislation could be introduced that would disenroll the individual; however, any such legislation could potentially have adverse tax consequences to the SRPS because employees of an employer participating in the employer pick-up program are allowed only a single election at commencement of employment. Additionally, Internal Revenue Code in-service distribution rules prohibit refunding of employee contribution while an individual is employed with any employer participating in the systems.

Although it may be frustrating for an individual to be required to enroll in EPS and contribute 7% of their annual salary toward a benefit for which they may not become eligible, the member may receive a return of the member's contributions plus interest at the time the member stops serving as an elected or appointed official. However, unlike the nonvested member who may receive a return of the member's accumulated contributions, the employer will not receive a return of employer contributions made on behalf of this member.

Appendix 1
Survey Questions for Employees’ Pension System Membership Study
on Under 500 Hour Employees
(Chapter 281 of 2017)

Please provide responses by e–mail no later than Friday, October 13, 2017

Please e–mail your responses to:
matthew.jackson@mlis.state.md.us
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During the 2017 session, the General Assembly passed legislation (Chapter 281) that requires the State Retirement Agency and the Department of Legislative Services to conduct a study on membership in the Employees’ Pension System for individuals who are employed in a position for which the budgeted hours per fiscal year are less than 500 hours. For more information see the attached legislation.

In order to gather the data necessary for the study, the Department of Legislative Services is conducting a survey of all of the governmental units that participate in the Employees’ Pension System. Please answer the following questions about the individuals who are employed in your governmental unit:

(1) How many individuals in the governmental unit are employed in a position for which the budgeted hours per fiscal year are less than 500 hours?

(2) Please complete the chart below for EACH individual who is employed in a position for which the budgeted hours per fiscal year are less than 500 hours. In the column labeled “Elected or Appointed?” please note whether the position is elected, appointed, or neither. In the column labeled “Status in the Employees’ Pension System” please enter either “enrolled” or “not enrolled”, as appropriate.

Position Title/ Position Classification	Elected or Appointed?	Status in the Employees’ Pension System

