# HOUSE BILL 819

K4, L6 3lr2352

By: **Delegates Schuh, Afzali, Aumann, Bates, Cluster, Eckardt, Elliott, Frank, George, Glass, Haddaway–Riccio, Hershey, Hogan, Hough, Jacobs, Kipke, Krebs, McComas, McDermott, W. Miller, Myers, Norman, O'Donnell, Otto, Parrott, Ready, Schulz, Serafini, Smigiel, Stifler, Stocksdale, and Szeliga**

Introduced and read first time: February 6, 2013
Assigned to: Appropriations

A BILL ENTITLED

AN ACT concerning

**Prudent Pension Management Act**

FOR the purpose of prohibiting the State or a county or municipality from issuing certain bonds or other evidences of obligation for the purpose of funding certain pension liabilities; prohibiting the Board of Trustees for the State Retirement and Pension System or the trustees or other officers in charge of certain local pension or retirement systems or funds from investing more than a certain percentage of assets in certain alternative investments; and generally relating to restrictions on methods of funding certain State and local retirement or pension systems, plans, or funds.

BY repealing and reenacting, with amendments,
Article 31 – Debt – Public
Section 32
Annotated Code of Maryland
(2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article 95 – Treasurer
Section 22(b)(2)
Annotated Code of Maryland
(2010 Replacement Volume and 2012 Supplement)

BY adding to
Article – State Personnel and Pensions
Section 21–123(j) and 21–302(d)
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW**.
**[**Brackets**]** indicate matter deleted from existing law.

(2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article 31 – Debt – Public**

32.

(a) [The General Assembly finds and determines that it is in the best interests of the citizens of the State and of the various municipal corporations subject to the provisions of Article 23A and counties subject to the provisions of Article 25A or Article 25B to permit each public body, at the times it shall determine to be appropriate, to issue general obligation bonds, revenue bonds, or other evidences of obligation in order to fund any unfunded liability of the public body with respect to any pension plan (hereinafter defined), thereby utilizing favorable market conditions that may exist from time to time to reduce the cost of the pension plan to the public body in question or otherwise structuring and providing for pension plan liability funding in a manner consistent with the financial plans of the public body.

(b)] **(1) THIS SUBSECTION APPLIES TO BONDS OR OTHER EVIDENCES OF OBLIGATION AUTHORIZED OR ISSUED ON OR BEFORE JUNE 30, 2013.**

**(2)** A municipal corporation subject to the provisions of Article 23A or a county subject to the provisions of Article 25A or Article 25B that has power under any public general or public local law or charter to borrow money and to evidence the borrowing by the issuance of its general obligation bonds, revenue bonds or other evidences of obligation, by whatever name known or source of funds secured, may issue bonds ("pension liability funding bonds") for the purpose of funding any unfunded present or contingent liability of any kind under any pension plan. For purposes of this [section] **SUBSECTION**, the term "pension plan" shall mean any existing pension or retirement plan or system under which the public body is directly or indirectly obligated to pay or cause to be paid retirement, disability, death or other benefits and that is closed to new membership. Pension liability funding bonds issued under the authority of this section may be issued for the public purposes of:

[(1)] **(I)** Realizing savings with respect to the aggregate cost of the pension plan being funded, on either a direct comparison or present value basis; or

[(2)] **(II)** Structuring or restructuring pension plan costs in a manner that**:**

[(i)] **1.** [in] **IN** the aggregate effects a reduction in the total cost of the pension plan as provided in [paragraph (1) above] **ITEM (I) OF THIS PARAGRAPH;** or [(ii)] **2.** [is] **IS** determined by the issuer to be in the best interests of the issuer, to be consistent with the issuer's long–term financial plan, and to realize a financial objective of the issuer, including improving the relationship of pension plan costs to a source of payment such as taxes, assessments, or other charges or improving the benefits payable under the pension plan.

**(3)** The power to issue pension liability funding bonds under this [section] **SUBSECTION** shall be deemed additional and supplemental to the issuer's existing borrowing power. Except as otherwise provided in this section, pension liability funding bonds shall contain the terms, conditions and covenants, be payable from the taxes or other sources and be issued pursuant to the procedures that are applicable or generally made applicable to the issuer's general obligation bonds, revenue bonds, or other evidences of obligation, as the case may be, which are the same as regards source of payment as the pension liability funding bonds to be issued.

[(c)] **(4)** Notwithstanding any limitations or other provisions to the contrary of Articles 23A, 25A, or 25B of the Annotated Code of Maryland, the charter or other authorizing legislation of the issuer, or any other local or general laws within the State, and without in any way limiting the generality of the foregoing, at the discretion of the legislative or other governing body of the issuer, pension liability funding bonds (i) may be issued without regard to any provisions of the issuer's charter or any other laws requiring public referendum before the issuance of public debt by the issuer or requiring that debt be issued only for the purpose of financing certain projects such as capital projects defined in any charter, or any other provisions that may be inconsistent with this [section] **SUBSECTION**, (ii) may be sold by the issuer on a negotiated basis without solicitation of bids at a price at, above or below par, (iii) may be issued in one or more series, each series being in the principal amount that the issuer determines to be required to achieve the purpose for the issuance of the pension liability funding bonds, (iv) shall bear interest at fixed rates determined by the issuer or at floating or variable rates established from time to time by a method of determination approved by the issuer, (v) may be issued as serial bonds or as term bonds with provisions for mandatory sinking fund or other annual principal redemption, provided that the principal and interest installments on the bonds need not be equal from year to year and may be consistent with the general financial plan of the issuer, and (vi) shall have a final maturity date not more than 30 years from the date of issue. The first principal installment or mandatory redemption of any pension liability funding bonds shall be payable not more than 3 years from the date of issue.

[(d)] **(5)** The proceeds of pension liability funding bonds, in amounts determined by the issuer, may be deposited in trust with a trust company or other banking institution as trustee, in a trust fund established in the name of the issuer. Money in the trust fund may be invested and reinvested in any taxable or tax–exempt securities, obligations, or other investments and at any yields that are determined by the issuer to be consistent with the purposes for which the pension liability funding bonds were issued and with the financial plan of the issuer. The interest, income, and profits, if any, earned or realized on any investment may be applied to the payment of a portion of the benefits under the pension plan to be funded, to the payment of the pension liability funding bonds or otherwise applied in any lawful manner. Money in the trust fund shall be available for the payment of all or any part of the benefits under the pension plan being funded and of the pension liability funding bonds, or any of them, and of any other related costs, as the issuer, in its discretion, may prescribe.

**[**(e)**]** **(6)** In any suit, action, or proceeding involving the validity or enforceability of any pension liability funding bond issued under this **[**section**]** **SUBSECTION** or any security therefor, any finding by the legislative or other governing body of the issuer as to the public purpose of any actions taken under this section or as to other matters relating to the issuance of bonds hereunder shall be conclusive.

**[**(f)**]** **(7)** Pension liability funding bonds issued pursuant to this **[**section**]** **SUBSECTION**, their transfer, the interest payable on them and any income derived from them, including any profit realized in their sale and exchange, shall be exempt at all times from every kind and nature of taxation by this State or by any of its political subdivisions, municipal corporations, or public agencies of any kind. Nothing in this **[**section**]** **SUBSECTION** shall prevent any public body described in paragraph **[**(b) above**]** **(2) OF THIS SUBSECTION** from authorizing the issuance and sale of pension liability funding bonds the interest on which is not excludable from gross income for federal income tax purposes.

**(B) ON OR AFTER JULY 1, 2013, A COUNTY OR MUNICIPALITY MAY NOT ISSUE GENERAL OBLIGATION BONDS, REVENUE BONDS, OR OTHER EVIDENCES OF OBLIGATION FOR THE PURPOSE OF FUNDING ANY LIABILITY OF ANY PENSION OR RETIREMENT SYSTEM, PLAN, OR FUND, WHETHER OR NOT THE PENSION OR RETIREMENT SYSTEM, PLAN, OR FUND IS CLOSED TO NEW MEMBERSHIP.**

## Article 95 – Treasurer

22.

(b) (2) **(I)** **[**The**]** **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** trustees or other officers in charge of any pension or retirement system or fund or other postemployment benefits fund of any political subdivision of the State or any agency or department of the political subdivision may invest, redeem, sell, exchange, and reinvest moneys under their custody or control as provided by law by the governing body of the political subdivision and shall comply with fiduciary standards that at least meet the standards set forth in Title 21, Subtitle 2 of the State Personnel and Pensions Article in connection with funds under their custody or control.

**(II) THE TRUSTEES OR OTHER OFFICERS IN CHARGE OF ANY PENSION OR RETIREMENT SYSTEM OR FUND OF ANY POLITICAL SUBDIVISION OF**

**THE STATE OR ANY AGENCY OR DEPARTMENT OF A POLITICAL SUBDIVISION OF THE STATE MAY NOT INVEST MORE THAN 10% OF THE ASSETS OF THE PENSION OR RETIREMENT SYSTEM OR FUND IN ALTERNATIVE INVESTMENTS THAT INCLUDE HEDGE FUNDS, PRIVATE EQUITY, HIGH YIELD DEBT, DISTRESSED DEBT, MEZZANINE DEBT, OR THE FEDERAL PUBLIC–PRIVATE INVESTMENT PROGRAM.**

## Article – State Personnel and Pensions

21–123.

**(J) THE BOARD OF TRUSTEES MAY NOT INVEST MORE THAN 10% OF THE ASSETS OF THE SEVERAL SYSTEMS IN ALTERNATIVE INVESTMENTS, INCLUDING HEDGE FUNDS, PRIVATE EQUITY, HIGH YIELD DEBT, DISTRESSED DEBT, MEZZANINE DEBT, OR THE FEDERAL PUBLIC–PRIVATE INVESTMENT PROGRAM.**

21–302.

**(D) THE STATE MAY NOT ISSUE GENERAL OBLIGATION BONDS, REVENUE BONDS, OR OTHER EVIDENCES OF OBLIGATION FOR THE PURPOSE OF FUNDING ANY LIABILITY OF THE SEVERAL SYSTEMS.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013.