

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 344 (Delegate Lierman)
Economic Matters and Appropriations

State Retirement and Pension System - Disability Retirement and Workers'
Compensation Benefits - Offsets

This bill repeals the requirement that the State Retirement and Pension System (SRPS) reduce an *accidental or special* (i.e., line-of-duty) disability payment by the amount of any related workers' compensation benefit paid and instead requires that workers' compensation benefits be reduced by the amount of any related accidental or special disability payment made by SRPS. The reduction does not apply to any cost-of-living adjustments made to disability benefits. The bill also repeals the authority to reduce a workers' compensation benefit by the amount of any *ordinary* (i.e., non-line-of-duty) disability payment that is paid by SRPS.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: State pension liabilities increase, by approximately \$1.5 million annually, because accidental/special disability payments are no longer offset by the amount of related workers' compensation payments. This results in an increase in State pension contributions, initially by about \$120,000 but eventually by as much as \$1.5 million annually. Any increase is assumed to be allocated 84% general funds, 8% special funds, and 8% federal and other funds. Further, State costs for workers' compensation payments may increase or decrease, depending on the relative size of offsets for ordinary disability, which are no longer offset, and for accidental/special disability, which are newly subject to offset. A reliable estimate of these effects is not feasible because the amount of the current ordinary disability offsets for workers' compensation is not known. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Pension Disability Payments

Prior to reaching normal retirement eligibility, a member of SRPS is eligible for one of two types of disability benefits:

- **ordinary disability**, if the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position, the incapacity is likely to be permanent, and the member has five years of eligibility service; or
- **accidental disability**, if the member is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member, the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position, and the incapacity is likely to be permanent. There is no minimum service requirement for accidental disability.

Instead of an accidental disability, members of the State Police Retirement System are eligible for a "special disability," in which the incapacity need only *arise out of* the actual performance of duty (*i.e.*, it need not occur at a specific time and place). For members of the Law Enforcement Officers Pension System, the disability benefit is still referred to as accidental, but the criteria for eligibility are identical to those for the State Police Retirement System in that the incapacity need only *arise out of* the actual performance of duty.

Workers' Compensation

All employers in Maryland are required to provide workers' compensation coverage for their employees. The cost to the employer varies by industry, and there are approximately 600 industrial classifications.

An injury is covered under workers' compensation if the harm suffered by the covered employee was by an accidental personal injury arising out of and in the course of covered employment. Benefits are paid to injured employees by the employer (if the employer is self-insured) or the employer's workers' compensation insurer. For compensable injuries,

workers' compensation benefits include wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses. Wage replacement benefits are based on the employee's average weekly wage and on the type of injury, as prescribed in the statute.

An employee has the responsibility of filing a claim with the Workers' Compensation Commission (WCC); however, if an accidental personal injury causes death or a disability for more than three days, the employer must report the accident to WCC within three days of learning about the injury. Additionally, when learning that a covered employee has been disabled due to an occupational disease, the employer must promptly report the disability to the commission.

Benefit Offsets

Several provisions in current law are designed to prevent an SRPS member from getting two payments from the State for the same disability. Thus, SRPS members receiving an *accidental or disability* payment are subject to an offset if they are getting a workers' compensation payment for the same injury or illness, subject to specified limits. Offsets do not include any calculation of cost-of-living benefits that are paid on the original benefit amount. Conversely, workers' compensation payments are subject to an offset if a recipient is also receiving an *ordinary* disability payment from SRPS.

Background: In fiscal 2016, SRPS had a total of 152,566 retirees, of whom 11,692 (7.7%) were receiving ordinary disability payments and 3,721 (2.4%) were receiving accidental or special disability payments. Also in fiscal 2016, SRPS paid a total of \$221.8 million in ordinary disability benefits and \$128.5 million in accidental and special disability benefits. Although the total amount of ordinary disability payments is nearly twice as large as total accidental disability payments, accidental disability payments have grown nearly twice as fast as ordinary disability payments since fiscal 2007.

During the 2016 interim, the State Retirement Agency (SRA) advised the Joint Committee on Pensions (JCP) that administering and monitoring the mandatory reductions in many instances can be unduly burdensome. Implementing an offset can be especially complicated when SRPS awards a line-of-duty disability benefit retroactively or when the agency does not receive timely notice of a workers' compensation award. The agency asked JCP to sponsor legislation that shifted responsibility for all offsets to the workers' compensation award; JCP decided not to introduce the requested legislation in the 2017 legislative session in order to explore addressing offsets more broadly.

State Expenditures: SRPS will no longer offset accidental and special disability payments by the amount of any workers' compensation payment, so those benefit payments increase. As a result, State pension liabilities increase; SRA advises that offsets are applied

for about one year before the disability payment is restored to the full amount. It estimates that in the current year accidental and special disability benefits were reduced by about \$1.5 million. It also advises that its actuary does not account for offsets in valuing benefits paid when it conducts its annual valuation (*i.e.*, the actuary assumes that the full benefit that is owed is paid).

Although SRA applies offsets only for one year, this analysis assumes that offsets total \$1.5 million annually, as new accidental and special disability benefits are awarded each year. Under this assumption, the consulting actuary advises that the elimination of the offsets results in a foregone gain of \$1.5 million to the system (given that offsets are not included in the annual valuation); amortizing that amount results in State pension contributions increasing by about \$120,000 in fiscal 2020. However, under the assumption that the foregone gain repeats each year, the total cost to the system eventually reaches the annual amount of the foregone offsets, or \$1.5 million.

The Chesapeake Employers' Insurance Company (Chesapeake) administers workers' compensation for State employees; however, all benefits are paid by the State. Workers' compensation payments are no longer subject to offset for ordinary disability payments, but they are newly subject to offset for accidental/special disability payments. Like SRPS, Chesapeake does not track offset amounts, so the net effect on State costs for workers' compensation payments cannot be reliably determined.

Although total payments for ordinary disability payments are greater than those for accidental/special disability payments, it is possible that offsets for accidental/special disability payments could exceed current offsets. This is because ordinary disability benefits are not job related, so the amount of current offsets to workers' compensation payments may not be that large, relatively speaking. By contrast, accidental/special disability benefits are job related, so there may be larger offsets to workers' compensation under the bill. Nevertheless, a reliable estimate of the net effect is not possible.

Additional Information

Prior Introductions: None.

Cross File: SB 751 (Senator Guzzone) - Budget and Taxation and Finance.

Information Source(s): State Retirement Agency; Chesapeake Employers' Insurance Company; Workers' Compensation Commission; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:

(410) 946-5510

(301) 970-5510