

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1625 (Delegate Miele)  
Environment and Transportation and  
Appropriations

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Elected and Public Officials - Crimes - Pension Forfeiture (Clean Up Annapolis Act)

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This bill adds members of the Legislative Pension Plan (LPP) and designated public officials in State government to existing provisions requiring some State officials to forfeit their pension benefits if they are convicted of specified crimes. Any forfeiture of pension benefits must be a total forfeiture. The bill also requires designated State and public officials who are indicted and convicted of specified crimes to reimburse the State for any expense reimbursements or per diem payments received after the indictment. **The bill takes effect June 1, 2018, and applies only prospectively; the pension forfeiture provisions take effect January 9, 2019.**

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Fiscal Summary

**State Effect:** Since it is assumed that this bill applies in a limited number of cases, State finances and pension liabilities are not materially affected.

**Local Effect:** None. The bill applies only to State employees.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** An official must reimburse the State for expense reimbursements and per diem payments received after an indictment *if* the official, during the official's employment or term of office, is indicted and convicted of a felony (1) that is committed in the course of the official's duties and responsibilities; (2) that is committed through the

use of the official's authority derived from the official's office; and (3) the commission of which results in, or is attempted to result in, gain, profit, or advantage for the official.

A member of the General Assembly or an employee who received compensation at a rate equivalent to grade 16 and was designated a public official under the Public Ethics Law is subject to a total forfeiture of pension benefits if they are found guilty, plead guilty, or enter a plea of *nolo contendere* for a qualifying crime as defined in current law. The bill also repeals all references to partial forfeiture of pensions in current law, thereby requiring that any forfeiture be a total forfeiture.

### **Current Law:**

#### *State and Public Officials*

Under the Public Ethics Law, a "State official" is:

- a constitutional officer or officer-elect in an executive unit;
- a member or member-elect of the General Assembly;
- a judge or judge-elect of a court;
- a judicial appointee;
- a State's Attorney;
- a clerk of the circuit court;
- a register of wills; or
- a sheriff.

Under the Public Ethics Law, Executive Branch employees are "public officials" if:

- they receive compensation at a rate equivalent to grade 16 or are appointed to a board;
- they are found by the State Ethics Commission to have decision-making authority or to act as a principal advisor to an individual with decision-making authority in making State policy or in exercising other executive or policy functions, as specified; and
- their duties are not essentially administrative and ministerial.

In addition, Executive Branch employees who exercise specified authority over procurement-related activities are also deemed public officials.

Other specified individuals, including members, appointees, or employees of the Maryland Stadium Authority or Canal Preservation and Development Authority, and members of the Emergency Medical Services Board, are deemed public officials.

The Public Ethics Law includes separate criteria for the designation of public officials in the Legislative and Judicial branches.

### *Pension Forfeiture*

Beginning January 9, 2019, Chapter 220 of 2016 allows retirement and pension benefits payable from the Employees' Retirement System (ERS) or Employees' Pension System (EPS) to specified elected and appointed State officials to be forfeited *in whole or in part* if the public employee is found guilty of, pleads guilty to, or enters a plea of *nolo contendere* to any of the specified "qualifying crimes." However, the benefits may not be forfeited if the Internal Revenue Service (IRS) determines that doing so will negatively affect or invalidate the tax qualified status of any of the several systems within the State Retirement and Pension System (SRPS).

Chapter 220 applies only to the following six elected or appointed "public employees" in the State if they are (1) a member, former member, or retiree of ERS/EPS; (2) have earned creditable service while employed in these positions; and (3) have been charged with a qualifying crime:

- the Attorney General;
- the Comptroller;
- the Governor;
- the Lieutenant Governor;
- the Secretary of State; or
- the Treasurer.

A "qualifying crime" under current law is a felony that (1) is committed in the course of a public employee's duties and responsibilities; (2) is committed through the use of the public employee's authority derived from the position of employment; and (3) results in, or is attempted to result in, gain, profit, or advantage for the public employee.

If the final adjudication of charges against a public employee results in conviction, the public employee's retirement allowance is forfeited *in whole or in part* in accordance with procedures established in the bill. Forfeiture may only be ordered if the qualifying crime occurred while the public employee was an active member of ERS/EPS. On written request by the Office of the Attorney General or a State's Attorney, the State Retirement Agency

must provide available information from the individual's retirement records to assist in notifying specified parties of the forfeiture.

A court may enter a domestic relations order (DRO), as defined by the bill, which requires that some or all of the forfeited benefits be paid to a spouse, former spouse, child, or other dependent. In determining whether to enter a DRO, the court must consider whether the potential beneficiaries were culpable or complicit in the commission of the qualifying crime. A forfeiture order may not impair or alter an existing DRO that provides benefits to a former spouse.

If a public employee has retired before a forfeiture order is issued, the Board of Trustees of SRPS may recover any benefits paid to the public employee before the forfeiture was ordered. If a conviction is reversed or overturned, the court must rescind the forfeiture order and any related DRO. If the public employee is retired when the conviction is overturned, SRPS must pay any benefits owed, including retroactive benefits with cost-of-living adjustments, but not including any benefits already paid under a related DRO.

If the IRS determines that application of the bill's forfeiture provisions negatively affects or invalidates the tax qualified status of any SRPS systems, any forfeiture of benefits that occurred before the IRS determination must be reversed to the extent necessary to comply with the determination.

Any public employee subject to forfeiture of benefits is still entitled to the return of accumulated contributions, upon request. Payment of accumulated contributions must be reduced by the amount of any unrecovered benefits that were paid but are subject to forfeiture.

#### *General Assembly Pension Forfeiture*

Provisions for the forfeiture of pension benefits by active and retired members of the General Assembly were enacted by Joint Resolution 4 of 2010, which amended the Resolution of the 2010 General Assembly Compensation Commission (GACC), and the Resolution of the 2014 GACC, which was enacted with no action by the General Assembly. Under the terms established by both documents, benefits payable by the LPP may not be paid if a member or retiree is convicted of or pleads *nolo contendere* to any crime committed while in office that is either (1) a felony or (2) a misdemeanor related to the member's public duties and responsibilities and involved moral turpitude for which the penalty may be incarceration. There are provisions for the restoration of benefits if the conviction is overturned or reversed. The Resolution of the 2018 GACC, which can be found in the [2018 GACC Report](#), maintains the same pension forfeiture provisions for the next legislative term.

**Additional Comments:** The bill indicates that the pension forfeiture provisions take effect concurrent with the effective date for Chapter 220 of 2017; however, the correct chapter law citation is Chapter 220 of 2016.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Budget and Management; State Ethics Commission; State Retirement Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2018  
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