

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 141 (Senator Carter)
Budget and Taxation

Pensions and Retirement – Forfeiture of Benefits – Law Enforcement Officers

This bill makes pension benefits payable to a law enforcement officer by specified State or local pension systems subject to forfeiture, in whole or in part, if the officer is found guilty of, pleads guilty to, or enters a plea or *nolo contendere* to specified crimes. **The bill takes effect July 1, 2022, and applies only to contributions accumulated, service earned, and crimes committed on or after that date.**

Fiscal Summary

State Effect: Since it is assumed that the bill applies in a limited number of cases, there is no discernible effect on State pension liabilities or contribution rates. No effect on revenues.

Local Effect: Since it is assumed that the bill applies in a limited number of cases, there is no discernible effect on local pension liabilities or contribution rates. No effect on local revenues.

Small Business Effect: None.

Analysis

Bill Summary: “Law enforcement officer” is defined as a member, former member, or retiree of (1) the State Police Retirement System (SPRS); (2) the Law Enforcement Officers’ Pension System (LEOPS); or (3) a local pension system for an individual employed as a sworn law enforcement officer.

A “qualifying crime” is any felony, perjury, or another misdemeanor relating to truthfulness and veracity committed in the course of performance of a law enforcement officer’s duties.

Procedure and Conditions for Forfeiture of Benefits

On conviction of a law enforcement officer, the Attorney General or the State’s Attorney must file a complaint in circuit court to forfeit the officer’s pension benefits in whole or in part. The court may enter an order requiring the forfeiture if the court finds by clear and convincing evidence that:

- the law enforcement officer was convicted of a qualifying crime;
- the law enforcement officer was a member of SPRS, LEOPS, or a local pension system; and
- the law enforcement officer committed the crime while the officer was an active member of SPRS, LEOPS, or a local pension system.

The court order must indicate the amount of benefits to be forfeited. When determining the amount to be forfeited, the court must consider (1) the severity of the crime; (2) the monetary loss suffered as a result of the crime; (3) the degree of public trust placed in the officer; and (4) any other factors that the court determines to be relevant. The court may order a law enforcement officer subject to forfeiture to request a return of the officer’s accumulated contributions made on or after the bill’s effective date, in whole or in part, to be used for restitution related to a qualifying crime.

Current Law: With the exception of the two provisions described below, pension benefits payable to members, former members, or retirees of the State Retirement and Pension System are not subject to forfeiture due to convictions for any crimes. Montgomery County has advised (for another bill) that its county code specifies that an officer’s pension will not be granted when the officer is convicted of a crime; otherwise, the Department of Legislative Services is not aware of any local pension systems that allow for the forfeiture of benefits.

State Officials’ Pension Forfeiture

Pension benefits payable by the Employees’ Pension System to any of the following six elected or appointed officials are subject to forfeiture if the official is found guilty of, pleads guilty to, or enters a plea of *nolo contendere* to a qualifying crime:

- the Governor;
- the Lieutenant Governor;

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

Qualifying crimes are felonies that (1) are committed in the course of the official's duties; (2) are committed through the use of the official's authority derived from the position of employment; and (3) result in, or are attempted to result in, gain, profit, or advantage for the official. The court may order that some or all of the forfeited or reduced benefits be paid to a spouse or other dependent under a domestic relations order.

Benefits for these public officials may not be forfeited or reduced if the Internal Revenue Service (IRS) determines that forfeiture or reduction will negatively affect or invalidate the tax qualified status of any State retirement or pension system.

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). The Resolution of the 2014 GACC and of the 2018 GACC, which were both enacted with no action by the General Assembly, maintained the forfeiture provisions. Under the terms established by all three documents, benefits payable by the Legislative Pension Plan 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.

Additional Comments: The State Retirement Agency advises that the bill may jeopardize the State Retirement and Pension System's federal tax-qualified status. As noted above, benefits for the six elected or appointed officials may not be forfeited if the IRS determines that forfeiture or reduction will negatively affect or invalidate the system's tax-qualified status. This bill does not include any such provision.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 123 (Delegate Wilkins, *et al.*) - Judiciary.

Information Source(s): Montgomery County; Office of the Attorney General; State Retirement Agency; Maryland Department of Transportation; Department of Legislative Services

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