

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 47 (Senator Carter)
Budget and Taxation

Pensions and Retirement - Forfeiture of Benefits - Law Enforcement Officers

This bill makes pension benefits payable by the State Retirement and Pension System or by local pension systems to specified law enforcement officers subject to forfeiture, in whole or in part, if the law enforcement officer is found guilty of, pleads guilty to, or enters a plea of *nolo contendere* to specified crimes. **The bill takes effect July 1, 2022, and does not apply to any service earned before 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 governmental pension liabilities or contribution rates. No effect on local revenues.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to a law enforcement officer who (1) is a member, former member, or retiree of the State Police Retirement System, the Law Enforcement Officers' Pension System, the Employees' Combined System, or a local pension system and (2) has earned creditable service while employed as a law enforcement officer. A "qualifying crime" is a criminal offense that is committed in the course of the law enforcement officer's official duties and responsibilities and that is a felony, perjury, or a misdemeanor related

to truth and veracity. The Board of Trustees of the State Retirement and Pension System must adopt regulations to implement the bill, and a local pension system must adopt policies and procedures to implement the bill.

Benefits may not be forfeited or reduced if the federal Internal Revenue Service (IRS) determines that the forfeiture or reduction will negatively affect or invalidate the tax qualified status of a State or local pension system.

Legal Process

On conviction of a law enforcement officer, the Attorney General or State's Attorney must file a complaint in circuit court to forfeit the officer's benefits in whole or in part. Notice of the complaint must be provided to (1) the officer; (2) the officer's spouse, dependents, beneficiaries, and any former spouse assigned benefits; and (3) the State Retirement Agency (SRA) or local pension system. On written request, SRA or a local pension system must provide the Attorney General or State's Attorney with available information from their records. The court must enter an order requiring the forfeiture in whole or in part 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 one of the covered pension plans; and
- the qualifying crime was committed while the law enforcement officer was an active member of one of the covered pension plans.

An order requiring forfeiture of benefits must indicate the amount of benefits to be forfeited. In determining the amount to be forfeited, the court must consider specified factors.

If a law enforcement officer has retired before a forfeiture order is issued, the State or local pension system may recover the amount of benefits paid before the order, subject to specified limitations.

A law enforcement officer subject to a forfeiture order is entitled to a return of accumulated contributions upon request, subject to specified reductions.

Spousal and Dependent Protections

If the court enters an order requiring the forfeiture of benefits, the court may enter a domestic relations order (DRO) that provides some or all of the forfeited benefits be paid to a spouse, a former spouse, a child, or any other dependent for purposes of child support, alimony, or marital property rights. The court must consider whether a spouse or dependent

was culpable or complicit in the qualifying crime. An order requiring forfeiture may not impair or alter an existing DRO providing benefits to an officer's former spouse.

Overturned Convictions

If the conviction is overturned or reversed, the court that issued the forfeiture order must rescind it and order the State or local pension system to pay any benefits that are payable. The court must also rescind any related DRO. For retired officers, benefits must be restored back to the date the benefits ceased and include any cost-of-living adjustments that would have been paid.

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 advises 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 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 Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Harford, Montgomery, and Talbot counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of State Police; State Retirement Agency; Department of Legislative Services

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