

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 790  
Appropriations

(Delegate Crosby)

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State Retirement and Pension System - Forfeiture of Benefits

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This bill makes pension benefits payable to almost all members, former members, or retirees of the State Retirement and Pension System (SRPS) subject to forfeiture if the member, former member, or retiree is found guilty of, pleads guilty to, or enters a plea of *nolo contendere* to specified crimes. **The bill takes effect July 1, 2023, and does not apply to any service earned or crime committed before that date.**

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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. The State Retirement Agency (SRA) can implement the bill with existing resources, as discussed below. 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 pension liabilities or contribution rates for participating governmental units. No effect on revenues.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill applies to “public employees,” defined as members, former members, and retirees of the:

- Employees’ Retirement System or Employees’ Pension System (EPS);
- Teachers’ Retirement System or Teachers’ Pension System;
- State Police Retirement System;

- Law Enforcement Officers' Pension System;
- Correctional Officers' Retirement System; and
- Judges' Retirement System.

A qualifying crime is first or second degree rape, or first or second degree attempted rape that is committed in the course of the performance of the public employee's duties and responsibilities.

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. If the IRS makes such a determination, any forfeiture of benefits that occurred must be reversed.

Only service credit in the State system in which the public employee is a member when the qualifying crime is committed is eligible for forfeiture.

The SRPS Board of Trustees must adopt regulations to implement the bill.

#### *Benefit Forfeiture Process*

If final adjudication of charges results in conviction of a public employee, the employee's retirement allowance must be forfeited. In general, benefits may not be paid to a public employee if the SRPS Board of Trustees finds by clear and convincing evidence that:

- the public employee was convicted of a qualifying crime;
- the public employee was a member of one of the covered pension plans; and
- the qualifying crime was committed while the public employee was an active member of one of the covered pension plans.

A public employee convicted of a qualifying crime may, within one year after the conviction, file a claim in circuit court for a partial payment of the employee's retirement allowance. Notice of the claim must be served on SRA. When considering the claim, the court must consider specified factors, including the severity of the crime.

A public employee subject to forfeiture of benefits is entitled to a return of the individual's accumulated contributions on request, as specified.

#### *Spousal and Dependent Protections*

A spouse, former spouse, child, or any other dependent of a convicted public employee may, within one year after the conviction, file a claim in circuit court for a partial payment

of the employee's retirement allowance for purposes of child support, alimony, or marital property rights. Notice of the claim must be served on SRA. The court may enter a domestic relations order (DRO) that allows some or all of the forfeited benefits to be paid to a spouse, a former spouse, a child, or any other dependents for purposes of child support, alimony, or marital property rights. The court must consider whether a spouse, former spouse, children, or other dependents were culpable or complicit in the qualifying crime.

The court may not order benefits to be paid to a public employee's spouse, former spouse, child, or other dependent in a manner that is inconsistent with the payment of benefits by SRPS. A forfeiture of benefits may not impair or alter an existing DRO providing benefits to a public employee's former spouse. A public employee's interest in a benefit of a former spouse established by DRO, or a benefit payable to a public employee as a beneficiary, may not be subject to a forfeiture or reduction under the bill.

#### *Retirees or Employees Eligible for Retirement*

If a public employee has retired before being convicted of a qualifying crime, the SRPS board may recover the amount of benefits paid before the conviction. The recovery is limited to the amount that would have been forfeited had the conviction occurred before retirement.

If a public employee is eligible to apply for retirement and submits an application as specified, SRA may not process the application unless and until the final adjudication of the charge does not result in a conviction.

#### *Overtured Convictions*

On receipt of an order that reverses or overturns a conviction of a public employee, the SRPS board must rescind the forfeiture of benefits and pay any benefits that are payable. Any related DRO is terminated, and the SRPS board or local pension system may not pay any benefits under the order. For retired individuals, benefits must be restored back to the date the benefits ceased and include any cost-of-living adjustments that would have been paid. If a conviction of a public employee who was not a retiree is overturned, the public employee may receive full benefits upon retirement.

**Current Law:** With the exception of the two provisions described below, pension benefits payable to members, former members, or retirees of SRPS are not subject to forfeiture due to convictions for any crimes. Montgomery County has previously advised 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 (DLS) is not aware of any local pension systems that allow for the forfeiture of benefits.

### *State Officials' Pension Forfeiture*

Pension benefits payable by EPS 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 DRO.

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 Resolutions of the 2014 GACC, 2018 GACC, and 2022 GACC were enacted with no action by the General Assembly and maintained the forfeiture provisions, so they remain in effect. Under the terms established by all resolutions, 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.

**State Expenditures:** SRA notes that, unlike earlier bills that have authorized the forfeiture of benefits, there is no requirement in this bill that courts or State’s Attorneys offices notify the system when a public employee becomes eligible for forfeiture. As a result, SRA

advises that it requires two full-time positions to quarterly check legal records to identify members or retirees who qualify for benefit forfeiture.

DLS disagrees that additional staff are needed. Although the bill does not require courts and State's Attorneys to advise SRA or local pension systems when a member or retiree becomes eligible for benefit forfeiture, DLS believes that SRA can establish a reporting process with courts and local and State law enforcement agencies to notify them when a member or retiree becomes eligible. In some instances, SRA will become aware because of media coverage of a case involving a public employee; in other cases, they will need to be notified by an employer, prosecutor, or court. Establishing ongoing reporting processes can be carried out by SRA with existing resources.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

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

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