

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 541  
Appropriations

(Delegate Forbes)(Chair, Joint Committee on Pensions)

Budget and Taxation

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State Retirement and Pension System - Earnable Compensation, Nonvested  
Former Members, and Immediate Vesting

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This bill (1) excludes specified payments to members of the State Retirement and Pension System (SRPS) from the definition of “earnable compensation”; (2) requires the SRPS Board of Trustees, after receiving proof of death of a former member, to pay any remaining accumulated contributions of a deceased nonvested former member to the former member’s designated beneficiary or, if there is no beneficiary, to the former member’s estate; (3) and clarifies which State government employees vest immediately upon becoming members of SRPS. **The bill takes effect July 1, 2023; the exclusion from earnable compensation applies retroactively, as described below.**

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Fiscal Summary

**State Effect:** The bill’s provisions (1) have no discernible effect on State pension liabilities or contribution rates; (2) conform statute to current law; or (3) are clarifying in nature, as discussed below. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:**

*Earnable Compensation*

“Earnable compensation” does *not* include (1) a lump sum payment by a participating employer that represents a retroactive salary increase to one or more classes of employees

for periods of employment that took place before the award of the payment and (2) any other payment that the SRPS Board of Trustees determines is not part of the member's annual salary rate payable for working the normal time in the member's position. Exclusion of these payments from the definition of "earnable compensation" applies retroactively to any applicable lump sum payment made on or after July 1, 2022. However, this provision does not apply to any lump sum payment by the Maryland Department of Transportation (MDOT) made between July 1, 2022, and June 30, 2023, inclusive, that represents a retroactive salary increase, as specified, if member and employer contributions on the payments were made to SRPS.

### *Immediate Vesting*

The bill clarifies that, in addition to the Secretary of a principal department of the Executive Branch, the following individuals have immediate vesting rights:

- Executive Director of the Alcohol and Tobacco Commission;
- Adjutant General of the Military Department;
- Chair of the State Board of Contract Appeals;
- Chair of the Public Service Commission;
- Chair of the Workers' Compensation Commission;
- Chief Administrative Law Judge of the Office of Administrative Hearings;
- Director of the Health Care Alternative Dispute Resolution Office;
- Director of the Maryland Energy Administration;
- Director of the Office of the Deaf and Hard of Hearing;
- Director of the Office of Homeland Security;
- Director of the Office of Performance Improvement;
- Director of the State Department of Assessments and Taxation;
- Director of the State Lottery and Gaming Control Agency;
- Executive Director of the Governor's Office of Community and Crime;
- Executive Director of the Governor's Office of Crime Prevention, Youth, and Victim Services;
- Executive Director of the State Retirement Agency (SRA);
- Insurance Commissioner of the Maryland Insurance Administration;
- Special Secretary of the Office of Small, Minority, and Women Business Affairs;
- State Archivist; and
- State Prosecutor of the State Prosecutor's Office.

## **Current Law:**

### *Earnable Compensation*

“Earnable compensation” is defined as one-twelfth of a member’s annual salary rate payable for working the normal time in the member’s position, including the employer’s pickup contribution or a contribution to a Maryland Supplemental Retirement Plan.

### *Deceased Former Members*

Members of SRPS who began service before July 1, 2011, vest after 5 years of service; members who began service on or after that date vest after 10 years of service. Members who vest, separate from service, and do not withdraw their accumulated contributions are entitled to a vested retirement allowance when they reach normal retirement age. The allowance is calculated based on their years of service and average final compensation (AFC) at the time they separated from service. Nonvested members who separate from service are entitled only to a return of their accumulated contributions, with interest.

When a *vested* former member dies before payment of the vested allowance begins, the SRPS board, after receiving proof of death, must pay the former member’s accumulated contributions to the designated beneficiary or, if there is no beneficiary, to the former member’s estate.

### *Immediate Vesting*

The following members of SRPS have immediate vesting rights in the State system in which they are a member:

- a Secretary of a principal department of State government;
- a head of a department, office, or any other unit of State government who (1) serves at the pleasure of the Governor or (2) is appointed by the Governor for a fixed term; and
- the Executive Director of SRA (but only if that individual commenced employment in that position on or after January 1, 2021).

## **State Expenditures:**

### *Earnable Compensation*

“Earnable compensation” is used to calculate AFC, which in turn is used to calculate a member’s basic retirement allowance at the time of retirement. SRA is not aware of any specific retroactive salary increases awarded as lump sum payments, so a reliable estimate

of the effect on State pension liabilities is not feasible. However, except for MDOT payments exempted by the bill, to the extent that any such payments have been made since July 1, 2022, or will be made in the future, the payments are not counted as earnable compensation. As this provision limits or reduces earnable compensation used to calculate retirement benefits, it represents a potential *reduction* in pension liabilities. Regardless, any such effect is expected to be negligible and have no discernible effect on State pension contributions.

#### *Deceased Former Members*

Although statute is silent with respect to payment of the accumulated contributions of a deceased *nonvested* former member, the SRPS board advises that it has been its practice to pay the accumulated contributions of deceased nonvested former members to their beneficiaries or estates, as required by the bill. Therefore, the bill conforms statute to current practice.

#### *Immediate Vesting*

The bill's listing of individuals who have immediate vesting rights is clarifying in nature, as it lists individuals who already have those rights under current law. The provision is intended to avoid confusion or disputes about who is or is not entitled to immediate vesting rights.

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### **Additional Information**

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

**Designated Cross File:** SB 274 (Senator Jackson)(Chair, Joint Committee on Pensions) - Budget and Taxation.

**Information Source(s):** State Retirement Agency; Department of Legislative Services

**Fiscal Note History:**  
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