

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 731
Judiciary

(Delegate Wilkins)

Pensions and Retirement – Forfeiture of Benefits – Law Enforcement Officers

This bill makes pension benefits payable by the State Retirement and Pension System (SRPS) or by local pension systems to specified law enforcement officers subject to forfeiture 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, 2023, and does not apply to any service earned or crime committed 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. 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 local governmental pension liabilities or contribution rates. Local pension systems can implement the bill with existing resources, as discussed below. 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 SRPS Board of Trustees 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.

Benefit Forfeiture Process

In general, benefits may not be paid to a law enforcement officer if the SRPS Board of Trustees or a local pension system 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.

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 convicted of a qualifying crime may, within one year after the conviction, file a claim in circuit court for a partial payment of the officer’s retirement allowance. Notice of the claim must be served on SRA or the local pension system. When considering the claim, the court must consider specified factors, including the severity of the crime. An order granting partial payment of benefits must indicate the amount to be paid. The court may not order a partial payment of benefits in a manner that is inconsistent with the payment of benefits in the State or local system in which the officer was a member.

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

A spouse, former spouse, child, or any other dependent of a convicted law enforcement officer may, within one year after the conviction, file a claim in circuit court for a partial payment of the officer’s retirement allowance for purposes of child support, alimony, or marital property rights. Notice of the claim must be served on SRA or the local pension system. 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 child, or any other dependents 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. A forfeiture of benefits may not impair or alter an existing DRO providing benefits to an officer's former spouse.

Overtured Convictions

On receipt of an order that reverses or overturns a conviction of a law enforcement officer, the SRPS board or local pension system 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 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 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 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 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 and the 2018 GACC were enacted with no action by the General Assembly and maintained the forfeiture provisions; the Resolution of the 2022 GACC includes the forfeiture provisions and is pending action by the General Assembly at the time of publication of this fiscal and policy note. 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/Local Expenditures: SRA notes that, unlike earlier versions of this bill, there is no requirement that courts or State's Attorneys offices notify the system when an active or retired law enforcement officer 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. Although local pension systems did not raise the same concern, courts and State's Attorneys are also not required to notify them under the bill.

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 and local pension systems 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 many instances, SRA or local pension systems will become aware because of media coverage of a case involving a law enforcement officer; 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 and local pension plans with existing resources.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 47 of 2022.

Designated Cross File: SB 597 (Senator Carter) - Budget and Taxation.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of State Police; State Retirement Agency; Department of Legislative Services

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