Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 360 (The Speaker, *et al.*) (By Request - Administration)

Environment and Transportation and Appropriations

Ethics and Accountability in Government Act

This Administration bill proposes a constitutional amendment that, if approved by the voters at the next general election, authorizes the enactment of a law providing for the forfeiture of legislative pension benefits of any member or former member of the General Assembly who is found guilty of a crime committed while in office. The bill also makes several statutory changes, including (1) modifying provisions governing the forfeiture of pension benefits to apply to members of the General Assembly and specified State employees who are convicted of qualifying crimes; (2) expanding the definition of "qualifying crime" as it applies to forfeiture of pension benefits; (3) increasing the minimum and maximum monetary penalties for bribery; (4) authorizing the State Ethics Commission (SEC) to impose a maximum $5,000 fine for any violation of the Maryland Public Ethics Law; and (5) prohibiting a former official or employee from disclosing or using specified confidential information acquired by reason of the individual's former public position. **Provisions related to forfeiture of pension benefits are contingent on the adoption of the constitutional amendment and apply retroactively to members of the General Assembly.**

Fiscal Summary

State Effect: No meaningful effect on State pension liabilities or contribution rates, as discussed below. General fund and Fair Campaign Financing Fund revenues increase minimally beginning in FY 2021 from the bill's penalty provisions, as discussed below. The bill can be implemented with existing budgeted resources.

Local Effect: Local revenues increase, likely minimally, beginning in FY 2021 as a result of the bill's penalty provisions for bribery cases heard in the circuit courts. Local expenditures are not affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Forfeiture of Benefits

The bill expands the definition of "qualifying crime," as it applies to provisions of State law governing forfeiture of pension benefits, to include *any* felony and a misdemeanor that is (1) committed in the course of a public employee's duties and responsibilities; (2) committed through the use of the public employee's authority derived from the position of employment; and (3) a crime of moral turpitude for which the penalty may be incarceration in a penal institution.

The bill expands provisions governing the forfeiture of pension benefits to apply to (1) a member of the General Assembly or (2) a State employee who received specified compensation and was designated as a public official under the Ethics Law who is convicted of a qualifying crime. The bill makes various conforming changes. For a member of the General Assembly, such provisions apply to all service earned as a member of the General Assembly. For specified State employees, the provisions do not apply to any service earned before October 1, 2020.

In addition, the bill repeals provisions authorizing the court to (1) enter an order requiring the forfeiture of a public employee's pension benefits *in part* or (2) enter into a domestic relations order (DRO) that provides some or all of forfeited benefits to be paid to a spouse, former spouse, child, or other dependent for specified purposes. The bill makes various conforming changes.

Bribery

The minimum fine for the misdemeanor of bribery is increased from $1,000 to $10,000, and the maximum fine is increased from $10,000 to $100,000.

Disclosure or Use of Confidential Information by Former Officials and Employees

The bill expands existing provisions governing the disclosure or use of confidential information by officials and employees to apply to *former* officials and employees. Accordingly, a former official or employee may not disclose or use confidential information acquired by reason of the individual's former public position and not available to the public for personal economic benefit or the economic benefit of another.

Current Law/Background:

General Assembly Compensation Commission

Article III, Section 15 of the Maryland Constitution provides that legislators receive compensation and expense allowances as established by the General Assembly Compensation Commission (GACC). The commission meets every four years to determine the compensation and expense allowances to be paid to members of the General Assembly during the next following term of office. The commission must submit its recommendations by formal resolution within 15 days after the beginning of the last regular session of a four-year term. The General Assembly may reduce or reject but may not increase any item in the resolution. Unless the General Assembly acts affirmatively to reduce or reject the recommended amounts, the commission's recommendations automatically take effect and have the force of law.

Forfeiture of Legislative Pensions

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 GACC, the Resolution of the 2014 GACC, which was enacted with no action by the General Assembly, and the Resolution of the 2018 GACC, which was also enacted with no action by the General Assembly. Under the terms established by the 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. The benefits are restored if the conviction is overturned.

Forfeiture of Pensions for Constitutional Officers

Chapter 220 of 2016 allowed retirement and pension benefits payable from the Employees' Retirement System (ERS) or Employees' Pension System (EPS) to specified elected and appointed State officials to be forfeited in whole or in part if the public employee is found guilty of, pleads guilty to, or enters a plea of *nolo contendere* to a qualifying crime. However, benefits may not be forfeited if IRS determines that doing so will negatively affect or invalidate the tax qualified status of any of the several systems within the State Retirement and Pension System (SRPS).

The Act applies to a member, former member, or retiree of ERS or EPS who has earned creditable service while employed as the Attorney General, Comptroller, Governor, Lieutenant Governor, Secretary of State, or State Treasurer. A "qualifying crime" is a felony that (1) is committed in the course of a public employee's duties and responsibilities; (2) is committed through the use of the public employee's authority derived from the position of employment; and (3) results in, or is attempted to result in, gain, profit, or advantage for the public employee.

If the final adjudication of charges against a public employee results in conviction, the public employee's retirement allowance is forfeited in whole or in part in accordance with procedures established under State law. Forfeiture may only be ordered if the qualifying crime occurred while the public employee was an active member of ERS/EPS. On written request by the Office of the Attorney General or a State's Attorney, the State Retirement Agency must provide available information from the individual's retirement records to assist in notifying specified parties of the forfeiture.

A court may enter a DRO, as defined under State law, which requires that some or all of the forfeited benefits be paid to a spouse, former spouse, child, or other dependent. In determining whether to enter a DRO, the court must consider whether the potential beneficiaries were culpable or complicit in the commission of the qualifying crime. A forfeiture order may not impair or alter an existing DRO that provides benefits to a former spouse.

If a public employee has retired before a forfeiture order is issued, the Board of Trustees of SRPS may recover any benefits paid to the public employee before the forfeiture was ordered. If a conviction is reversed or overturned, the court must rescind the forfeiture order and any related DRO. If the public employee is retired when the conviction is overturned, SRPS must pay any benefits owed, including retroactive benefits with cost-of-living adjustments, excluding any benefits already paid under a related DRO.

Maryland Public Ethics Law

Public Officials: "Public official," as it applies to the Maryland Public Ethics Law, means an individual determined to be a public official under § 5-103 of the General Provisions Article and includes specified individuals in the Executive, Legislative, and Judicial branches.

Generally, an individual in an executive unit is a public official upon a determination by SEC in accordance with specified criteria pertaining to the individual's compensation, decision-making authority, and/or advisory role to an individual with decision making authority. An individual in the Legislative Branch is a public official if the individual receives specified compensation and is so designated by order of the Presiding Officers of the General Assembly. Generally, an individual in the Judicial Branch is a public official if the individual receives specified compensation.

Use or disclosure of Confidential Information: An official or employee may not disclose or use confidential information acquired by reason of the individual's public position that is not available to the public for personal economic benefit or the economic benefit of another. "Official," as it applies to the Ethics Law, means a State or public official; "employee" means an individual who is employed by an executive unit, by the Legislative Branch, or in the Judicial Branch and does not include a public or State official.

Violations: Any entity may file a complaint with SEC alleging a violation of the Ethics Law. In addition, SEC may, on its own motion, issue a complaint alleging a violation. For further action, SEC must promptly refer a complaint to the (1) Commission on Judicial Disabilities, if the complaint concerns a judge; (2) the Joint Committee on Legislative Ethics, if the complaint alleges a violation of conflict of interest provisions by a State official of the Legislative Branch; or (3) staff counsel, if the complaint concerns any other entity.

For a complaint retained by SEC, if SEC determines that the respondent has violated any provision of the Ethics Law, SEC may (1) issue an order of compliance directing the respondent to cease and desist from the violation; (2) issue a reprimand; or (3) recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if authorized by law. For violations of lobbying provisions, SEC may (1) require a regulated lobbyist to file additional reports or information, as specified; (2) impose a fine of up to $5,000 for each violation; or (3) suspend the registration of a regulated lobbyist.

Monetary penalties assessed by SEC are distributed to the Fair Campaign Financing Fund.

Enforcement by the Court: SEC may petition the circuit court to compel compliance with an order or seek other relief authorized under State law. The court may compel compliance with an SEC order by issuing an order to cease and desist from the violation or granting other injunctive relief. The court may also impose a fine of up to $5,000 for a violation of the Ethics Law, with each day that the violation occurs being a separate offense. Monetary penalties assessed by the court are deposited in the general fund. Under specified circumstances, the court may void an official act of an official or employee arising from a prohibited conflict of interest.

Criminal Penalties: Except as specified, a person who knowingly and willfully violates the lobbying provisions of the Ethics Law is guilty of a misdemeanor and subject to a maximum fine of $10,000 and/or imprisonment for up to one year.

Bribery

An individual may not bribe or attempt to bribe a public employee to influence the employee's performance of an official duty. In addition, a public employee may not demand or receive a bribe, fee, reward, or testimonial to (1) influence the employee's performance of official duties or (2) neglect or fail to perform the employee's official duties. "Public employee" means an officer or employee of the State or a political subdivision of the State and includes an executive officer of the State, a judge or judicial officer of the State, a member or officer of the General Assembly, a member of the police force of Baltimore City or the Department of State Police, and a member, officer, or executive officer of a political subdivision.

A violator is guilty of bribery, a misdemeanor punishable by 2 to 12 years imprisonment and/or a fine of $1,000 to $10,000. Chapter 31 of 2017 increased the minimum and maximum monetary penalties for bribery from $100 to $1,000 and from $5,000 to $10,000, respectively. On conviction, a violator may not vote or hold an office of trust or profit in the State. The State may initiate a prosecution for the offense of bribery at any time.

State Revenues: The bill authorizes SEC to impose a fine of up to $5,000 for any violation of the Ethics Law. Under current law, SEC may impose a fine of up to $5,000 only for violations of specified lobbying provisions. Monetary penalties assessed by SEC accrue to the Fair Campaign Financing Fund. Accordingly, special fund revenues increase beginning in fiscal 2021. Any such impact is likely to be minimal.

In addition, the bill increases the minimum and maximum fines applicable to the misdemeanor of bribery. The District Court and the circuit courts have concurrent jurisdiction over these violations. Accordingly, general fund revenues increase due to additional fine revenue from bribery cases heard in the District Court. Any such impact, however, is likely to be minimal.

The bill expands statutory provisions governing the forfeiture of benefits to apply to members of the General Assembly and specified State employees who are convicted of qualifying crimes and expands the types of crimes for which public employees are subject to forfeiture of pension benefits. The bill generally codifies existing policy with respect to the forfeiture of legislative pension benefits. Nonetheless, it is assumed that the bill's changes apply in a minimal number of cases. Accordingly, the bill is not expected to have a meaningful effect on State pension liabilities.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 283 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs and Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; State Ethics Commission; State Retirement Agency; Maryland Supplemental Retirement Plans; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2020
an/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Ethics and Accountability in Government Act**

BILL NUMBER: HB360/SB283

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

____ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS