

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 454

(Senator Elfreth, *et al.*)

Budget and Taxation

Appropriations

State Police Retirement System, Law Enforcement Officers' Pension System, and
Judges' Retirement System - Surviving Spouse Benefit - Same-Sex Spouses

This bill allows a retiree of the State Police Retirement System (SPRS), Law Enforcement Officers' Pension System (LEOPS), and Judges' Retirement System (JRS) who retired before January 1, 2013, to convert his or her optional retirement allowance for a surviving same-sex spouse to an unreduced basic allowance, thereby making the surviving spouse eligible for a full spousal benefit. The request for such a conversion must be made by December 31, 2023, and required documentation must be submitted by that date as well. **The bill takes effect July 1, 2023, and terminates June 30, 2024.**

Fiscal Summary

State Effect: As the bill is expected to apply in only a limited number of instances, there is only a minimal effect on State pension assets and no discernible effect on State pension contribution rates, as discussed below. No effect on revenues.

Local Effect: As with the State, there is no discernible effect on pension contribution rates for participating governmental units. No effect on local revenues.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to a retiree of SPRS, LEOPS, and JRS who:

- retired before January 1, 2013 (when same-sex marriage became legal in Maryland);
- at the time of retirement, selected an optional allowance and designated an individual of the same sex as a beneficiary;

- married the designated beneficiary on or after January 1, 2013; and
- remains married to the designated beneficiary on July 1, 2023.

The bill establishes similar procedures for eligible retirees in SPRS, LEOPS, and JRS that require a retiree to:

- request that the optional allowance be converted to a basic allowance, thereby making the spouse eligible for an automatic surviving spousal benefit under current law;
- present a valid marriage license confirming the marriage between the retiree and the designated beneficiary;
- verify that the retiree and the beneficiary are not (or have not been) divorced as of the bill's effective date.

The bill includes contingency arrangements in the event that the retiree has already predeceased the spouse (allowing the surviving spouse to submit the necessary paperwork). It also specifies the adjustments, including retroactive adjustments and cost-of-living increases, that the State Retirement and Pension System (SRPS) must make to the retiree's benefits to reflect the conversion to a basic allowance.

Current Law:

Optional Benefits for Beneficiaries

Most SRPS members who file retirement applications may choose from among six alternatives to the basic allowance in order to provide a survivor benefit for a surviving spouse, child, or other beneficiary. The basic allowance provides the maximum unreduced benefit payment to the retiree but offers no survivor benefit, so all payments stop when the retiree dies. State law requires that each optional allowance be actuarially equivalent to the basic allowance, so retirees who select one of the six survivor options are subject to an actuarially determined reduction in their monthly benefit payments to account for the additional payments that will be made following their death. The allowance reductions are calculated based on the ages of both the retiree and the beneficiary.

The six options are as follows:

- **Option 1** pays the balance of the actuarial equivalent present value of the retiree's basic allowance at the time of retirement in a lump-sum payment to the beneficiary or the retiree's estate.

- **Option 2** provides a 100% joint and survivor benefit in which the beneficiary receives 100% of the reduced benefit payment the retiree had been receiving prior to death.
- **Option 3** provides a 50% joint and survivor benefit in which the beneficiary receives one-half of the reduced benefit payment.
- **Option 4** pays the balance of the retiree’s accumulated contributions at the time of retirement, if any, in a lump-sum payment to the beneficiary or the retiree’s estate.
- **Option 5** provides a 100% survivor benefit, except that if the beneficiary predeceases the retiree, the retiree begins receiving the basic allowance (also called a “pop-up” option).
- **Option 6** provides a 50% “pop-up” survivor benefit.

Once a retiree makes a selection of the basic allowance or one of the six options, the selection may not be changed after the first retirement payment is made.

Automatic Benefits for Surviving Spouses or Dependent Children in Selected Plans

As described above, a retiree who selects an optional allowance in order to provide a benefit to a surviving spouse or beneficiary receives an actuarially reduced retirement allowance in return for providing a survivor benefit. However, the following retirees who are married or who have dependent children are eligible to receive an *unreduced* basic retirement allowance at the time of retirement while still providing an automatic survivor benefit to their spouses or dependent children:

- a retiree of SPRS who has retired with a normal service allowance, a disability allowance, or a deferred vested allowance;
- a retiree of LEOPS who has retired with a normal service allowance or a disability allowance; and
- a retiree of JRS.

The Department of Legislative Services notes that active and former members of JRS also qualify for an automatic survivor benefit, but they are not affected by the bill.

Surviving spouses or dependent children of deceased SPRS retirees receive 80% of the retiree’s allowance. Surviving spouses or dependent children of LEOPS and JRS retirees receive 50% of the retiree’s allowance. In all three plans, the survivor benefit is paid to a

surviving spouse or, if there is no surviving spouse, to surviving dependent children in equal shares (if there is more than one dependent child).

State Expenditures: Prior to same-sex marriage becoming legal in Maryland on January 1, 2013, retirees of the three affected plans who wanted to provide a survivor benefit to a same-sex partner had to designate the same-sex partner as a beneficiary and receive an actuarially reduced basic allowance, as they did not qualify for the automatic spousal benefit. As a result, their beneficiary also received a reduced allowance upon the retiree's death instead of the full spousal benefit. Under the bill, these retirees are entitled to:

- prospective restoration of the unreduced basic allowance, including any cost-of-living adjustments made in the intervening time; and
- a lump sum payment consisting of the retroactive difference between the retiree's reduced benefit and the unreduced basic allowance, including any cost-of-living adjustments and interest.

The bill includes similar but adjusted payments to the surviving spouse in the event that the retiree is deceased when the bill becomes effective.

If the retiree dies after the bill becomes effective (and after submitting the necessary paperwork), the surviving spouse is entitled to the full spousal benefit.

The State Retirement Agency (SRA) has identified a total of 109 accounts in the three affected plans (90 in LEOPS, 14 in SPRS, and 5 in JRS) in which a retiree was not married at the time of retirement and selected an optional allowance with a designated beneficiary. SRA's search is unable to determine whether the retiree and beneficiary are of the same sex or if they are married. Nevertheless, this data indicates that the possible universe of affected retirees is relatively small, and likely smaller than the 109 total accounts identified by SRA.

In the absence of more definitive data on the affected retirees, a reliable estimate of the bill's effects on State pension liabilities and contribution rates is not feasible. However, given the bill's limited applicability, the effect of the adjusted benefits and lump sum payments on total pension assets and unfunded liabilities is likely minimal and results in no discernible effect on State pension contributions. To the extent that eligible retirees and/or beneficiaries do not submit the necessary paperwork, the fiscal effect is even less.

Additional Information

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

Designated Cross File: HB 601 (Delegate Forbes) - Appropriations.

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

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