

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 643
Appropriations

(Delegate James) (Chairman, Joint Committee on Pensions)

Budget and Taxation

**State Retirement and Pension System - Disability Retirement Appeals -
Procedures**

This pension bill specifies procedures for appeals of applications for disability retirement by members of the State Retirement and Pension Systems (SRPS). The bill provides that the Office of Administrative Hearings' (OAH) decision is the final administrative decision of an appeal for a disability retirement.

The bill is effective July 1, 2004 and applies only to the denial of a disability retirement allowance that is appealed on or after July 1, 2004.

Fiscal Summary

State Effect: To the extent that the board is no longer overturning pension decisions of the medical board that would be upheld by the circuit courts, pension liabilities could decrease by \$462,400 in FY 2005.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that if either a member or a retiree is aggrieved due to the decision of the medical board, as adapted by the SRPS board, regarding an application for disability retirement, the aggrieved party may appeal the decision of the medical board to OAH. OAH is required to issue written findings of fact for the final

decision regarding an appeal. If either the member, retiree, or the board is aggrieved as a result of the OAH decision, they may pursue action in the circuit court.

The board is required to report annually to the Joint Committee on Pensions by September 1. The report must contain: (1) the number of recommendations made by the medical board that are remanded back by the Board of Trustees for further review; (2) the number of applicants that receive or are denied disability retirement allowances by the Board of Trustees; (3) the number of appeals taken to OAH; (4) the results of each appeal to OAH; (5) the number of appeals taken to the circuit court; and (6) the results of each appeal taken to the circuit court.

Current Law: The board is required to establish one or more medical boards that review members' applications for accidental disabilities. The medical board may request additional information from the member and require the member to be examined by an independent medical examiner. The medical board can find that: (1) a member is disabled; (2) a member is not disabled; or (3) a member is not eligible for an accidental or special disability, but is eligible for an ordinary disability. The medical board submits its certification to the Executive Director of the State Retirement Agency (SRA) who forwards the decision to the member. Members have the option of accepting the medical board's decision or filing a request for reconsideration by the medical board of the member's application. After reaching a final decision on the member's request for reconsideration, the medical board then submits its decision to the Executive Director of SRA for review by the Board of Trustees of SRPS.

Applicants who are denied ordinary disabilities may appeal that decision to OAH. An applicant who has been denied either an accidental or special disability retirement but granted an ordinary disability may accept the ordinary disability and simultaneously file a request for a hearing before an administrative law judge (ALJ) in OAH on the denial of the accidental or special disability retirement allowance. The OAH hearing includes the applicant, the applicant's attorney (if applicable), and the Assistant Attorney General for SRA. Each party may (1) call witnesses and present evidence; (2) cross-examine each witness called by a party; (3) submit rebuttal evidence; and (4) make opening and closing statements. The presiding ALJ is required to prepare and submit to the Executive Director of SRA and each of the parties, a proposed decision that includes proposed findings of fact and proposed conclusions of law. Upon receiving the proposed decision, the applicant, the applicant's attorney, or the Assistant Attorney General for SRA may file exceptions to the decision with the Executive Director of SRA.

The executive director forwards the decisions that involve only medical issues back to the medical board for final review and all other decisions and corresponding exceptions to the board of trustees. The applicant, the applicant's attorney, and the Assistant Attorney General for SRA have the right to appear before the SRPS board to present arguments, but may not introduce any evidence that is not included in the official record. The

trustees may also question each party. Following the hearing, the board of trustees is required to issue a final decision based on the official record, the proposed decision, the exceptions filed by each party, and the arguments presented by each party to the board. If the applicant's claim is denied by the board of trustees, the applicant is then advised of the applicant's right to appeal the board's decision to the circuit court.

Background: The Joint Committee on Pensions (JCP) studied the issue of disability hearings during the 2003 interim. JCP reviewed the current procedures and potential problems with those procedures including:

- conflicts of interest related to members of the board that are able to file for disability benefits on behalf of members that are also employees in their department;
- conflicts of interest related to elected board members of the teachers', employees', and possibly State Police systems voting on the appeal of a member of their constituency;
- lack of a right to appeal by SRA;
- no requirements in current law or regulations that the board prepare a written record of decisions on appeals;
- the increased liabilities that the system may incur in granting appeals for benefits that would not have been granted by OAH but which were granted by the SRPS board;
- the significant amount of board time required to review appeals for accidental disability benefits, which can often last two to three hours per board meeting. Members frequently stay for the fiduciary and administrative business of the board and then leave just enough board members for a quorum. Ex officio members are more likely to leave board hearings than elected members, leaving elected members to decide the appeals of their constituents; and
- the significant backlog of 58 cases the board had accumulated as of August 2003. The backlog of cases is so severe that the board has considered holding special meetings with the express purpose of hearing disability appeals.

State Fiscal Effect: OAH indicates that the provisions of this bill would not increase workloads or place any additional strain on agency resources because it already handles these cases and issues proposed determinations.

To the extent that OAH grants fewer accidental and special disabilities, State pension liabilities would decrease. Since 1998, under the current disability hearings procedures, the board has granted 31 members accidental disability retirements after the medical board had determined them to be only eligible for an ordinary disability retirement. The State's actuary advises that by overturning these 31 decisions, State pension liabilities increased by \$2,774,484.

Exhibit 1 provides detail on the appeals granted by the board. The board has averaged 5.3 overturned decisions per year with average total increased liabilities of \$86,703 per case since 1998. If this pattern continues, the board's average decisions will increase liabilities to the system by over \$462,414 each year.

The bill would also decrease the amount of time the board spends on disability hearings and permit more board resources to be focused on the fiduciary responsibilities of the board. The provisions of this bill could also free staff resources currently taken up with preparations for lengthy appeals before the board of trustees. SRA notes that any additional cases that are appealed to the circuit courts may increase demands on the agency's legal staff. The Department of Legislative Services disagrees with this assessment and notes that the corresponding drop in legal staff workload due to the removal of appeals from the board would mitigate the fiscal impact of any additional legal appeals work.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Milliman USA, Office of Administrative Hearings, State Retirement Agency, Department of Legislative Services

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Exhibit 1
Liability Increase Due to Board Overturning Denied Disability Retirements

<u>System</u>	<u>Monthly Ordinary Disability Benefit</u>	<u>Monthly Accidental Disability Benefit</u>	<u>Increase in Benefit</u>	<u>Total Liability due to Increased Benefit</u>
ERS	\$1,781	\$2,587	\$806	\$76,784
EPS	899	1,742	843	83,220
TPS	1,385	2,380	995	82,812
ERS	652	1,909	1,257	135,418
TPS	,504	3,005	1,501	129,728
EPS	434	1,472	1,038	88,826
EPS	2,413	2,826	413	43,535
EPS	851	1,875	1,024	104,256
TRS	3,041	4,846	1,805	175,684
EPS	599	1,146	547	54,584
EPS	589	1,356	767	78,090
EPS	112	1,241	1,129	94,827
ERS	1,820	3,084	1,264	123,381
TRS	817	1,513	696	57,927
ERS	540	1,518	978	101,406
TPS	1,536	3,438	1,902	172,832
TPS	2,048	2,984	936	91,103
ERS	621	1,269	648	56,682
TPS	171	775	604	47,634
SPRS	1,107	2,403	1,296	98,830
TRS	2,034	3,215	1,181	124,140
EPS	441	1,198	757	72,665
EPS	846	1,280	434	45,265
EPS	230	1,073	843	84,769
EPS	832	1,576	744	74,025
SPRS	2,549	3,527	978	64,115
EPS	361	1,107	746	76,483
ERS	1,249	2,649	1,400	136,098
TPS	127	928	801	63,170
EPS	983	1,652	669	67,272
EPS	816	839	23	2,590
Total for Employees' Systems	17,271	34,248	16,977	1,666,509
Total for State Police Retirement System	3,656	5,930	2,274	162,945
Total for Teachers' Combined Systems	<u>12,663</u>	<u>23,084</u>	<u>10,421</u>	<u>945,030</u>
Grand Total	\$33,590	\$63,262	\$29,672	\$2,774,484