

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 633
Appropriations

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

Pensions - Designation of Beneficiary - Powers of Attorney

This emergency bill exempts the State Retirement Agency (SRA), the Board of Trustees of the State Retirement and Pension System (SRPS), and SRPS from specified provisions of law regarding acceptance of powers of attorney. It also establishes the conditions under which the agency may accept a designation of beneficiary form submitted by an agent of a member, former member, or retiree.

Fiscal Summary

State Effect: Potential significant cost avoidance associated with appealing legal challenges resulting from SRA's refusal to accept powers of attorney and for payment of sanctions resulting from unsuccessful appeals. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: SRA, the board, and SRPS are exempt from provisions of current law that (1) require a person to accept an acknowledged statutory power of attorney; and (2) may subject a person who fails to accept a power of attorney to a court order and liability for reasonable attorney's fees and costs involved in challenging the denial of a power of attorney.

If an agent – who has authority to act under a power of attorney – of a member, former member, or retiree submits a designation of beneficiary form seeking to create or change the designated beneficiary of the member, former member, or retiree, SRA may refuse to

accept the form unless the power of attorney explicitly states, without restriction, that the agent has the authority to create or change a beneficiary designation. If the form names the agent, or the agent's spouse or dependent, as a beneficiary, the power of attorney must state explicitly and without restriction that the agent has the authority to designate the agent or the agent's spouse or dependent as a beneficiary, or that the agent has the authority to make a gift to the agent from the property of the member, former member, or retiree.

Current Law: Chapter 689 of 2010 established the Maryland General and Limited Power of Attorney Act, also known as Loretta's Law. As noted, among the Act's provisions is a requirement that persons accept a statutory form power of attorney or face sanctions for their refusal of an acknowledged statutory power of attorney.

Background: SRA advises that it receives as many as 200 requests per year from agents operating under a power of attorney seeking to change the designated beneficiary of a member, former member, or retiree. Often, the requests seek to make the agent or the agent's spouse or dependent the beneficiary. In most cases, SRA rejects the requests to change the designated beneficiary, but under Chapter 689, the agency is subject to sanctions if it continues its current practice.

State Fiscal Effect: To the extent that SRA continues to refuse to accept powers of attorney in the absence of the bill, it potentially avoids the administrative burden and cost of appealing legal challenges to its refusal to accept them. Those costs would be primarily general funds borne by the Office of the Attorney General. To the extent that the appeals were unsuccessful, SRA would be liable for financial penalties under the Act. Those penalties would be special funds paid from the SRPS trust fund.

Additional Information

Prior Introductions: None.

Cross File: SB 481 (Senator Jones-Rodwell)(Chair, Joint Committee on Pensions) - Budget and Taxation.

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

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510