

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 542

(Senators Feldman and Ferguson)

Budget and Taxation

Appropriations

State Retirement and Pension System - Forfeiture of Benefits

This bill allows 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 any of the specified "qualifying crimes." However, the benefits may not be forfeited if the Internal Revenue Service (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 SRPS Board of Trustees must adopt regulations to implement the bill.

The bill takes effect January 9, 2019, and applies only prospectively to any crimes committed and service credit earned on or after the bill's effective date.

Fiscal Summary

State Effect: No meaningful effect on State pension liabilities or contribution rates, as explained below. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies only to the following six elected or appointed "public employees" in the State if they are (1) a member, former member, or retiree of ERS/EPS;

(2) have earned creditable service while employed in these positions; and (3) have been charged with a qualifying crime:

- the Attorney General;
- the Comptroller;
- the Governor;
- the Lieutenant Governor;
- the Secretary of State; or
- the 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 in the bill. 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 domestic relations order (DRO), as defined by the bill, 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, but not including any benefits already paid under a related DRO.

If the IRS determines that application of the bill’s forfeiture provisions negatively affects or invalidates the tax qualified status of any SRPS systems, any forfeiture of benefits that

occurred before the IRS determination must be reversed to the extent necessary to comply with the determination.

Any public employee subject to forfeiture of benefits is still entitled to the return of accumulated contributions, upon request. Payment of accumulated contributions must be reduced by the amount of any unrecovered benefits that were paid but are subject to forfeiture.

Current Law: 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), and the Resolution of the 2014 GACC, which was enacted with no action by the General Assembly. Under the terms established by both documents, 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 similar provisions to those in the bill for the restoration of benefits if the conviction is overturned or reversed.

There are no other provisions in State law for the forfeiture of pension benefits related to conviction of a crime, including for the Governor.

Background: At the request of the Joint Committee on Pensions, the Department of Legislative Services studied the issue of pension forfeiture for public officials during the 2015 interim. The study found that a number of other states have laws addressing the consequences on an individual's retirement benefits from a public system when the individual commits certain crimes. The approach among the states varies with respect to the individuals subject to those consequences, the applicable crimes that trigger those consequences, and the severity of those consequences. Twenty-nine states have laws directing forfeiture or reduction of retirement benefits when an individual is convicted of a crime. Some states have enacted laws that not only address the forfeiture of benefits but also address in detail the process by which a forfeiture is carried out. Other states have very broad provisions that leave much unsaid about the process. A handful of states do not have a benefit forfeiture *per se*, but they do allow benefits to be offset to pay restitution connected with a conviction.

State Fiscal Effect: The bill applies only to six members of SRPS at any given time. In the modern history of the State, only two Governors or former Governors, and none of the other public employees listed in the bill, have been convicted of, or pled no contest to, a qualifying crime. Therefore, the bill is not expected to have a meaningful effect on State pension liabilities or contribution rates.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Retirement Agency, Department of Legislative Services

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