

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 1258  
Appropriations

(Calvert County Delegation)

Budget and Taxation

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Calvert County - Length of Service Award Program - Death Benefits (Patricia  
Ann "Pat" Osburn Law)

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This bill requires Calvert County to grant a death benefit of \$6,000 to any volunteer that dies in the line of duty, as determined by the Workers' Compensation Commission (WCC). This benefit must be in addition to any other benefit the volunteer receives. The bill must be construed to apply retroactively and must be applied to and interpreted to affect the death benefits of any volunteer of any Calvert County volunteer fire company, rescue squad, or dive team who was eligible to receive benefits on or after January 1, 2015. **The bill takes effect July 1, 2019.**

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**Fiscal Summary**

**State Effect:** WCC can handle the bill's requirements using existing resources. Revenues are not affected.

**Local Effect:** Calvert County expenditures increase by \$6,000 in FY 2020 and by a minimal amount in future years due to the payment of death benefits under the bill. Since 1970, only four individuals affected by the bill have died in the line of duty. County revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** In Calvert County, if a volunteer who has completed 25 years of certified active volunteer service dies prior to receiving specified benefits, the volunteer's surviving spouse or alternate beneficiary (if not married) is entitled to benefits. A surviving spouse

of the volunteer is entitled to benefits equal to 50% of the volunteer's benefits. These benefits terminate upon death or remarriage of the spouse. If a volunteer dies prior to receiving any benefits, leaving no surviving spouse, an alternate beneficiary may receive 50% of the deceased volunteer's benefits until the earlier of either 10 years of benefits, the beneficiary's marriage, or the beneficiary's death. Chapter 113 of 2018 expanded the benefit in the county so that the alternate beneficiary could be the child, grandchild, or great-grandchild of the volunteer under specified circumstances.

## **Background:**

### *Patricia Ann "Pat" Osburn*

Patricia Ann "Pat" Osburn was a volunteer rescue captain for the North Beach Volunteer Fire Department in Calvert County. In May 2018, after transporting a patient to the CalvertHealth Medical Center, she was found unresponsive in the back of the ambulance used to transport the patient and pronounced dead after resuscitative efforts failed. Osburn joined the fire department in 1999 and held numerous positions during her tenure, including rescue sergeant, rescue lieutenant, and rescue captain.

### *Length of Service Award Programs (LOSAP)*

LOSAPs are pension-like programs administered at the local level that are used as an incentive for the recruitment and retention of volunteer firefighters and emergency medical services (EMS) personnel. As of November 2015, all but three of the major jurisdictions in the State administer LOSAPs, the exceptions being Baltimore City and Dorchester and Wicomico counties. Baltimore City's fire department is entirely a professional entity and firefighter pensions are administered by the city's Fire and Police Employees' Retirement System. A small number of municipalities in the State also have LOSAPs for their fire and EMS volunteers, including Ocean City, Salisbury, Easton, and St. Michaels.

LOSAPs are locally funded out of the general operating budget, the dedicated fire-rescue tax, or an annuity. Contributions made by the local government into a LOSAP plan on behalf of a volunteer are income tax deferred under federal and State tax laws. Under federal income tax law, Section 457 of the Internal Revenue Code specifies the requirements that must be met by deferred compensation plans sponsored by governmental employers in order for taxation to be deferred until the plan beneficiary actually receives benefits under the plan (rather than at vesting when the benefits are "constructively received" or made available to the volunteer). Although LOSAPs are technically deferred compensation plans, they are unique in that they are administered on behalf of volunteers who receive little or no compensation, and would therefore almost always fail to satisfy the Section 457 requirements. Section 457(e)(11), therefore, specifically excludes LOSAPs from those requirements, assuming certain criteria relating to volunteer status and annual

accrual amounts are satisfied, and LOSAP benefits are not includible in the volunteer's gross income until they are paid out to the volunteer. In addition, benefits from qualifying LOSAPs are not considered "wages" for FICA tax purposes. Under State law, §10-207(g) of the Tax-General Article specifically excludes (in the form of a subtraction modification) LOSAP payments from State income taxation.

### *LOSAP Benefits*

In operation, LOSAPs pay eligible volunteers cash benefits when the volunteer reaches the prescribed entitlement age and logs the required number of active service years. Entitlement age ranges from the age of 50 in Anne Arundel, Calvert, and Howard counties to a high of 65 years of age. In addition, most county LOSAPs pay some measure of benefits if a volunteer dies or becomes disabled before reaching the entitlement age.

After a specified number of years of certified active service, which is 25 years in most counties, an eligible volunteer may receive a monthly benefit payment ranging from \$50 in Somerset County to a high of \$478 in Howard County, although some benefits are subject to a monthly or annual cap.

### *Active Service Points*

Active service for purposes of eligibility for LOSAP benefits is determined by a point system that credits volunteers for specified activity. LOSAP plans also award points, subject to a calendar year maximum, to volunteers who are prohibited from performing their duties because of a pending workers' compensation claim.

Depending on the county, a volunteer must earn anywhere from 50 to 60 points in a calendar year to qualify as an active volunteer member for that year. In Calvert County, for example, points must be earned in at least four of the following seven categories: approved training courses, company or county drills, official meeting attendance, responses to calls of duty, completion of a one-year term of office in any of the county's fire or rescue service organizations, hours of collateral duty, and military service.

Typically, volunteer fire companies are tasked with recordkeeping and the certification of their volunteers' active service points and are required to report that information periodically to the local fire or emergency services department, or other designated agency. Volunteers are afforded the right to appeal the number of certified points when that number is in dispute, and LOSAP rules describe the procedures for the appeals process.

### *Reduced Benefits*

Nine counties offer reduced benefits to volunteers who reach the entitlement age but fail to acquire the required number of active service years. For instance, in Prince George's County, an eligible 70-year-old volunteer with at least 10 years of active service is entitled to a monthly benefit of \$8 multiplied by the number of years of certified active service. Therefore, if the volunteer has 15 years of active service, the volunteer may receive \$120 per month for life, compared to \$350 in monthly payments that a 55-year-old with 25 active service years would receive.

### *Survivor's Benefits*

All but nine counties offer survivor benefits to surviving spouses. If an eligible volunteer dies while receiving benefits (or prior to receiving benefits assuming the required number of active service years has been met), the volunteer's surviving spouse is entitled to a certain amount of benefits ranging from 50% to 75% of what the volunteer was entitled to receive. This benefit terminates upon the death or remarriage of the spouse. In Calvert County, if an eligible volunteer dies leaving no surviving spouse, an alternate beneficiary may receive 50% of the deceased volunteer's benefits until the earlier of either 10 years of benefits, the beneficiary's marriage, or the beneficiary's death.

### *Burial or Death Benefits*

In all but five counties, when an eligible volunteer dies having completed the minimum number of active service years, a burial or death benefit may be payable to the surviving spouse or designated beneficiary. Cecil, St. Mary's, and Washington counties restrict these benefits to cases in which the volunteer dies in the line of duty.

### *Disability*

In 15 of the 21 counties that administer LOSAPs, eligible volunteers that become disabled while performing firefighter or EMS duties may be entitled to LOSAP benefits, regardless of age or years of active service. A disabled volunteer qualifies for disability benefits if the disability prevents the volunteer from pursuing his or her normal occupation and if the disability is certified as permanent in nature.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Calvert County; Workers' Compensation Commission;  
Department of Legislative Services

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