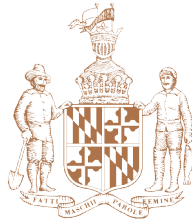


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April 26, 2023

The Honorable Wes Moore  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401  
*Delivered via email*

***RE: Senate Bill 139, "State Police Retirement System and Law Enforcement Officers' Pension System - Deferred Retirement Option Program – Alterations"***

Dear Governor Moore:

We hereby approve Senate Bill 139 for legal sufficiency and constitutionality. We write, however, to point out a drafting error in the bill and to recommend how the bill should be read to comport with legislative intent and avoid an application that could potentially violate federal antidiscrimination law.

Senate Bill 139 extends the time for participation in the Deferred Retirement Option Program ("DROP") for members of the State Police Retirement System ("SPRS") and Law Enforcement Officers Pension System ("LEOPS") from 5 years to 7 years. SPRS has a mandatory retirement age of 60, but LEOPS does not. Section 2 of Senate Bill 139 creates a 6-month election period, from 7/1/23 to 12/31/23, for current DROP members to extend their DROP participation for 2 extra years. A member of DROP must separate from employment and commence retirement benefits at the end of their DROP participation.

The primary legislative sponsor of Senate Bill 139 and the State Retirement Agency ("SRA") indicate that the bill erroneously, in Section 2(b)(2), places an "age 60" restriction on an opportunity for existing DROP members to extend participation in DROP for *both* SPRS and LEOPS. Only members of SPRS, however, are subject to a mandatory retirement

age of 60.<sup>1</sup> As a result, if Section 2(b)(2) was read to apply to members of LEOPS existing LEOPS DROP members who are age 58 or older and will reach 5 years before next term, they would not be able to extend DROP membership, and would have to resign their jobs and begin collecting retirement benefits. SRA advises that there are approximately 25 existing law enforcement officers in the DROP program for LEOPS who would be adversely impacted if the language was read to apply to them.

We believe that Section 2(b)(2) should be read to apply only to members of the SPRS who participate in the DROP pursuant to State Personnel and Pensions Article (“SPP”), § 24-401.1 and are subject to a mandatory retirement age of 60 under SPP § 24-401(c) and Public Safety Article, § 2-415(a). SPP § 24-401.1(c)(2) prohibits participation in the DROP for members of SPRS who are age 60 or older. In contrast, members of LEOPS do not have a mandatory retirement age and are not restricted by age in their participation in DROP. Reading Section 2(b)(2) to apply to members of LEOPS would lead to an absurd result of preventing existing DROP members from extending their participation past age 60, when the underlying DROP statute for LEOPS being amended by Section 1, SPP § 26-401.1, allows members who are age 60 and older to participate. *See Lockshin v. Semsker*, 412 Md. 257, 274-76 (2010) (“In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.”). As a benefits bill introduced at the behest of law enforcement officers’ representatives, the legislature would have been unlikely to intentionally limit the bill’s application to members of LEOPS who are age 60 or younger, as that group does not have a mandatory retirement age.

In addition, enforcement of the age 60 participation rule for LEOPS as written in Section 2(b)(2), could potentially raise federal law concerns under the Age Discrimination in Employment Act (“ADEA”) or the Equal Protection Clause. The reason is that application of the provision would prevent current LEOPS DROP members who are age 60 or older from taking advantage of the enhanced benefit made available to members under age 60. *See EEOC v. Baltimore Co.*, 747 F.3d 267 (4th Cir. 2014) (finding that county retirement plan violated the ADEA by requiring older employees to pay higher member contributions based on their age at the time of enrollment). This is not a concern for members of the SPRS, who must retire at age 60, a mandatory retirement age for SPRS that is permissible under the ADEA, 29 U.S.C. § 623(j). *See Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307 (1976) (ruling that mandatory retirement age for police officers did not violate the equal protection clause).

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<sup>1</sup> It appears that the bill drafters copied the “age 60” language in Chapters 725 and 726 from 2018, which extended DROP participation one year only for members of SPRS, who have a mandatory retirement age of 60. LEOPS officers were not part of the 2018 bill.

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Members of LEOPS do not have a mandatory retirement age. And nothing in the legislative history suggests that the General Assembly intended to deny current LEOPS DROP members the opportunity to extend the benefit for an additional two years if they are 60 or older. The Fiscal & Policy Note only mentions that SPRS members must be younger than age 60, which is the mandatory retirement age for those members. *Harrison-Solomon v. State*, 442 Md. 254, 287 (2015) (“We do not presume that the Legislature intended to enact unconstitutional legislation and, if it did so intend, we would limit a statute to only those situations in which it would pass constitutional muster.”).

Accordingly, Section 2(b)(2) should be read to apply only to members of the SPRS who participate in the DROP pursuant to SPP § 24-401.1 and are subject to a mandatory retirement age of 60 per SPP § 24-401(c).

Sincerely,

A handwritten signature in black ink, appearing to read 'A.G. Brown', with a stylized flourish at the end.

Anthony G. Brown

AGB/SBB/kd

cc: The Honorable Susan C. Lee  
Eric G. Luedtke  
Victoria L. Gruber