



STATE RETIREMENT AGENCY
120 East Baltimore Street
Baltimore, MD 21202-6700

MARYLAND
STATE RETIREMENT
and PENSION SYSTEM

410-625-5555 • 1-800-492-5909
TTY Users: call via Maryland Relay
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**Testimony in Support with Amendments for Senate Bill 396
Public Safety Officer - Performance of Duties - Death and Disability Benefits
Senate Budget and Tax Committee
February 5, 2025
2:00 P.M.**

**Anne Gawthrop
Director of Legislative Affairs
State Retirement Agency**

The Board of Trustees for the State Retirement and Pension System (System) wishes to express its support with amendments for Senate Bill 396, Public Safety Officer - Performance of Duties - Death and Disability Benefits.

Senate Bill 396 would, in part, establish a presumption that a member of the Correctional Officers' Retirement System (CORS), the Law Enforcement Officers' Pension System (LEOPS), or the State Police Retirement System (SPRS) is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty for members of the CORS, or arising out of or in the course of the actual performance of duty for members of the LEOPS or SPRS and will be awarded an accidental/special disability if the System's Medical Board certifies that:

1. the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position;
2. the member was diagnosed by a licensed medical or mental health professional with post-traumatic stress disorder (PTSD), acute stress disorder, or a trauma- and stress-related disorder;
3. the diagnosis under item (2) resulted due to the nature and performance of the normal duties of the member's position;
4. the incapacity is likely to be permanent; and
5. the member should be retired.

Additional provisions of Senate Bill 396 allow 9-1-1 specialists employed by a participating governmental unit to participate in the LEOPS if their employer joins the LEOPS.

Post Traumatic Stress Disorder Presumption for Accidental or Special Disability Benefits

Currently, provisions of the State Personnel and Pensions Article addressing the award of an accidental or special disability benefit (line of duty disability benefit) for members of the CORS, LEOPS, and SPRS, provide, in part, that a member may receive an accidental or special disability benefit if the System's Medical Board determines the member is *mentally* or physically incapacitated from the further performance of the normal duties of the member's position. There is no provision in the CORS, LEOPS, or SPRS disability provisions that excludes a member from claiming they are mentally incapacitated from

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the further performance of the normal duties of their position as a result of PTSD, acute stress disorder, or a trauma– and stress–related disorder.

The State Retirement Agency (Agency) does not track disability applications by the mental or physical incapacity from which members claim to be suffering; however, we did manually review each disability application that was filed by members of the CORS, LEOPS, and SPRS, from July 1, 2023 through December 31, 2024. From this review, we were able to compile the following data.

LEOPS

- 19 total disability recommendations by the Medical Board were sent to the Board, five of which had a PTSD diagnosis
 - One applicant claimed ordinary disability (non-line of duty) and was approved
 - Four applicants claimed accidental disability and all were approved

CORS

- 70 total disability recommendations by the Medical Board were sent to the Board, six were for PTSD or trauma and stress related disorder
 - Four applicants claimed accidental disability and all were approved
 - One applicant claimed ordinary disability and was approved
 - One claimed accidental disability, but was denied and approved for ordinary disability

SPRS

- 15 total disability recommendations by the Medical Board were sent to the Board, one is for PTSD and has not been resolved at this time

We believe that based on these findings over the last 18 months, there does not appear to be any justification for the addition of a presumption. In fact, as evidenced by the findings of these claims, the Agency is unaware of any cases where a member claimed to be mentally incapacitated due to PTSD, acute stress disorder, or a trauma– and stress–related disorder, and benefits were inappropriately denied in the absence of a presumption. Accordingly, we believe that it would appear unnecessary to create a presumption for these conditions. Rather, we would recommend that the Committee consider adding a reporting requirement that the Agency continue to track disability claims for PTSD, acute stress disorder, or a trauma– and stress–related disorder and annually report their findings to the Joint Committee on Pensions each interim.

Moreover, we are concerned with the proposed language requiring a presumption based on the diagnosis of a treating physician. By statute, the Medical Board independently makes medical determinations following a review of all of the evidence, and where helpful, following an independent medical evaluation. This provision would strip the Medical Board of its authority and allow the award of disability based simply on a treating doctor’s diagnosis.

9-1-1 Specialists Joining LEOPS

Currently, individuals serving as 9-1-1 specialists participate in the Employees’ Pension System (EPS), if their employer participates in the EPS as a participating governmental unit. Eligibility for retirement in the EPS is either age 62 with five years of service if the member commenced service in the EPS prior to July 1, 2011, or age 65 with 10 years of service if the member commenced service in the EPS on or after July 1, 2011. Eligibility for retirement in the LEOPS is age 50 with five years of service if the member commenced service in the LEOPS prior to July 1, 2011, or age 50 with 10 years of service if the member commenced service in the LEOPS on or after July 1, 2011. Additionally, a member of LEOPS may also

be eligible to retire after accruing 25 years of service, regardless of age or when the member was enrolled in the LEOPS.

The technical definition for “normal retirement age” as provided for by the Internal Revenue Service (IRS) states that it is the age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. The IRS has issued proposed regulations that address the definition of normal service retirement age for qualified governmental pension plans, specifically addressing normal retirement age for public safety officers.

The IRS proposed regulations provide that a normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable, and a normal retirement age lower than age 65 represents the age at which employees customarily retire in the industry. Additionally, the proposed regulations include several sets of safe harbors which would allow for a normal service retirement age lower than age 65, with specific safe harbors for qualified public safety employees. For these employees, the proposed safe harbors are:

- age 50;
- combined age and years of service totaling 70 or more; or
- any age with 20 years of service.

Section 72(t)(10)(B) of the Internal Revenue Code defines a qualified public safety employee as any employee of a state or political subdivision of a state who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such state or political subdivision.

In the absence of final regulations, governmental plans must continue to comply with pre-ERISA vesting requirements. Under those rules, the normal retirement age is ordinarily age 65, and a plan may specify a lower age only if this lower age would be an age which employees customarily retire in the particular industry.

The issue of moving 9-1-1 specialists has been before this Committee in the past (Senate Bill 700 of 2024 and Senate Bill 822 of 2022). When Senate Bill 822 was introduced, tax counsel for the System reviewed the definition of a 9-1-1 specialist under §1-301(n) of the Public Safety Article, which includes language stating that a 9-1-1 specialist’s duties include:

- receiving and processing 9-1-1 requests for emergency services;
- other support functions directly related to 9-1-1 requests for emergency services; or
- dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency.

After reviewing this definition, the System’s tax counsel expressed concern that these duties would not satisfy the definition of a qualified public safety employee under I.R.C. § 72(t)(10)(B). Additionally, there was a concern that providing 9-1-1 specialists a normal retirement at age 50 or after accruing 25 years of service, regardless of age, is not consistent with the normal retirement age at which other equivalent positions (other non-qualified public safety employees) customarily retire in the industry.

Based on this advice, we believe that permitting 9-1-1 specialists to receive a normal retirement after reaching age 50 or after accruing 25 years of service, regardless of age, would violate the I.R.S. proposed regulations addressing normal retirement age. Therefore, adding 9-1-1 specialists who do not meet the definition of "qualified public safety employees," will present tax qualification issues for the System. We would urge the Committee to remove these provisions from Senate Bill 396.

We appreciate being given the opportunity to share our support for Senate Bill 396 with amendments and discuss our proposed amendments with the Committee. We stand ready to provide any further information or services the Committee might request regarding Senate Bill 396.