

2018 Board Requested Legislation

The following legislative proposals are offered by the Board of Trustees for the State Retirement and Pension System for the consideration by the Joint Committee on Pensions for the 2019 legislation session. These legislative proposals are intended to clarify or correct perceived inconsistencies within existing law and remove obsolete provisions within the State Personnel and Pensions Article. In addition, some of these proposals will result in more freedom for staff to complete the tasks required to help the State Retirement Agency (Agency) and System run efficiently.

MPAS Legislation

As the Agency's technology and operational re-engineering strategy, known as the "Maryland Pension Administration System" (MPAS) project, enters its last phase, Business Process Re-Engineering and Supporting Technology ("MPAS-3"), it includes the long-anticipated integration of existing applications and modifications to MPAS that will allow members and retirees to access their own account information and transact business with the Agency over the Internet, in real time. In providing these improvements to member service and self-service, the Agency will be moving from its current paper-driven operations to more timely, efficient automated processes. To assist in reaching this goal, the Board is recommending two changes to the State Personnel and Pensions Article.

Notarization

One of the goals of MPAS-3 is to allow members to complete necessary retirement forms on-line, including a form that allows a participant to designate a beneficiary. Currently, the law requires that designation of beneficiary forms be notarized prior to submission to the Agency. With the evolution of MPAS-3, notarization of designation of beneficiary forms that are completed on-line will not be possible. Accordingly, the Board is recommending amending this provision of the law to eliminate the requirement that designation of beneficiary forms be notarized. For those forms completed on-line, other electronic identifying features will be put in place to authenticate the identity of the member completing the form. For designation of beneficiary forms that continue to be submitted in writing to the Agency, the Board's regulations will still require notarization.

Certification and Payment of Member Contributions

Current law states that as each payroll is paid, participating employers are required to submit both member contributions and payroll data supporting these contributions to the Agency. However, the contributions and data are not required to be submitted simultaneously; the law provides for a five-day window between when a participating employer submits the member contributions and when the supporting data follows. What results is that often the member contributions do not match the payroll data. This difference can be attributable to members withdrawing or dying in the intervening period between when the member contributions and payroll data are submitted. When this occurs, staff reports that the Agency will not accept the

member contributions until they are reconciled to the payroll data. This creates an administrative burden on the staff to work with the participating employer to resolve the discrepancies.

To address this issue, one of the features of MPAS-3 will be to accept member contributions and payroll data simultaneously. The Board is recommending that in anticipation of this development, the current law be amended to remove the lag time of five days between submitting member contributions and payroll data, and instead, require participating employers to submit both components, simultaneously.

Alternate Contributory Pension Selection - Vesting

An individual who vested as a member of the Alternate Contributory Pension Selection (ACPS) of the Employees' or Teachers Pension System (EPS and TPS) before July 1, 2011 and then leaves membership for any length of time, may resume membership in the ACPS if the member returns to a position that is eligible for participation in the ACPS. However, a deferred vested member who vested in the ACPS after July 1, 2011, is required to join the Reformed Contributory Pension Benefit (RCPB) tier of the EPS or TPS if the member has a break in service of more than four years. To allow for consistency in dealing with all deferred vested members in the ACPS, the Board is recommending that the provisions of law that allow ACPS deferred vested members to re-enter the ACPS, regardless of the length of the break in service, be expanded to include members who vest in the ACPS on or after July 1, 2011.

The Board has asked the System's actuary to determine what the cost to the System will be if this proposed legislation is adopted.

Workers' Compensation Offset

Current law generally prevents a member of the System who is receiving both a workers' compensation award and a disability retirement allowance from recovering twice for the same injury. Section 29-118 of the State Personnel and Pensions Article requires the Board to reduce an accidental or special disability retirement benefit by any related workers' compensation benefit paid during the same time period. Under § 9-610 of the Labor and Employment Article, a workers' compensation award to an employee of a government unit or quasi-public corporation is offset by the amount of similar disability payments that are not subject to an offset under § 29-118 of the State Personnel and Pensions Article. In short, if an individual receives a workers' compensation award and an ordinary disability retirement, the workers' compensation award is offset; if an individual receives a workers' compensation and a line-of-duty disability retirement, the disability retirement is offset.

Because of the complicated offset arrangement governing offsets and reductions for workers' compensation and disability retirements, what has resulted is a process that is disjointed and sometimes inconsistent in its application. Specifically, staff has found that implementing an offset to a line-of-duty disability can be especially complicated when the Agency retroactively awards a line-of-duty disability after the retiree has begun receiving an ordinary disability and

has been subject to an offset on the workers' compensation award by the amount of the ordinary disability. In that instance the Agency is required to reduce the member's line-of-duty disability by the amount of the workers' compensation award, resulting in the member having the same offset taken twice.

To avoid this inequity to the retiree, the Board is proposing the following two options for the Joint Committee's consideration:

1. Amend provisions of current law to require the Workers' Compensation Commission to modify its award and unwind any employer offset for a retiree who has been subject to an employer offset to the retiree's workers' compensation benefit as a result of also receiving an ordinary disability benefit that is later converted to a line-of-duty disability benefit; or
2. Amend provisions of current law to require the Agency to reduce its offset to a line-of-duty disability benefit to reflect any offset awarded to an employer by the Workers' Compensation Commission for the ordinary disability benefit.

Pension Simplification and Clarification

Purchase of Eligibility Service by EPS Members

Chapter 618 of the Acts of 2006 (House Bill 1430) clarified that under federal law a member of the EPS may only purchase up to five years of eligibility service as a post-secondary school teacher. During the 2006 session, House Bill 1430 was amended and provisions in the original bill, as introduced, regarding this limitation of purchasing eligibility service mistakenly remained. The original language that remained in Chapter 618, as enacted (and amended during the 2006 session), inadvertently, negates the purchase limitations added through Chapter 618 and other purchase limitations that were already in the law prior to 2006. Accordingly, the Board is recommending correcting this section of law addressing purchases of eligibility service credit.

Optional Retirement Program – Regulations

Title 30 of the State Personnel and Pensions Article establishes the Optional Retirement Program (ORP) and provides that the Board shall adopt regulations that are necessary to carry out this title. This specific provision was included in Chapter 423 of the Acts of 1993 (Senate Bill 316). Chapter 423 expanded the number of companies that could provide annuity contracts to participants of the ORP from one to five. Since the passage of Chapter 423, and to comply with federal regulations that state that a 403(b) plan must be maintained pursuant to a written plan document that must comply in form and operation with the requirements of the Internal Revenue Code and regulations, the Board instead has adopted a plan document to carry out the provisions of Title 30 of the State Personnel and Pensions Article. Consequently, the Board is recommending legislation to require that it adopt and maintain a written plan document and permit, but not require, it to adopt regulations to implement this title.

State Police Retirement System – Reemployment

Staff for the Agency and the Department of Legislative Services have long agreed that certain provisions governing the reemployment of retirees of the State Police Retirement System (SPRS) are not a model of clarity. The Board is recommending working with DLS to clarify these provisions. Any changes made to these provisions would be non-substantive.

Unused Sick Leave

Local Employer Cash Outs

Under current law, a member of the Employees' or Teachers' Retirement System (ERS or TRS), EPS, or TPS may receive additional service credit at the time of retirement for any unused sick leave the individual has accrued over the course of the individual's career with the State. This credit may not be used to qualify for retirement. Moreover, because pension law allows an individual to convert unused sick leave to service credit, the State does not offer cash payments for this time. However, a number of participating employers, including boards of education, libraries, and community colleges that participate in the TRS or TPS do provide payment for some portion of a retiring member's unused sick leave. Those employers that pay for unused sick leave at retirement also certify and include that paid leave in the total days of unused leave reported to the Agency for additional service credit.

This issue was brought before the Joint Committee during the 2007 interim as Board requested legislation to prohibit the receipt of unused sick leave credit to the extent that a member has received a cash payout for the unused sick leave. The Joint Committee agreed to sponsor the legislation and it was crossfiled during the 2008 session by the Joint Committee chairs as House Bill 480 and Senate Bill 376. However, both bills were withdrawn by the Chairs prior to any committee votes. The Board is recommending the proposal again due to the Agency's most recent legislative audit, wherein, it was included as one of the audit findings.

Preserving Unused Sick Leave for EPS Members Required to Join the Correctional Officers' Retirement System

Legislation during the 2016, 2017, and 2018 sessions requires that certain members of the EPS and ERS be moved into the Correctional Officers' Retirement System (CORS). The affected members, after being moved into the CORS have the option to transfer their EPS/ERS service into the CORS. Those who elect not to transfer will receive potentially two benefits at retirement – an EPS/ERS benefit based on their previous service and a CORS benefit, if they vest after being moved.

Current law provides that at retirement a member is entitled to receive creditable service for unused sick leave if the member retires on or before 30 days after the member is separated from employment. Therefore, a member who has been moved to CORS would not be eligible for unused sick leave in the EPS because he or she will not be retiring from the EPS directly upon separation from service. This would suggest that an individual with 28 years of EPS

creditable service who does not elect to transfer into the CORS will have all of their unused sick leave earned as both an EPS and CORS member applied to their CORS benefit. However, current law also provides that a member may not accumulate more than 15 days of sick leave per year in the system from which the member is retiring. Therefore, if the total number of days of unused sick leave earned by the employee exceeds 15 per year of service in the current plan, the member does not receive credit for any additional unused sick leave. This typically results in the forfeiture of all or most of the leave earned while a member of the former plan.

Returning to the hypothetical EPS member with 28 years of service when the member was moved into the CORS, for purposes of this example, assume this member never took a sick day. Prior to being moved into the CORS that member would have accrued 420 days of unused sick leave (19 months) of creditable service in the EPS. If, after being moved into the CORS, this member retires after five additional years of service, still without taking any sick days, the most the member will be able to apply towards retirement will be 75 days (15 days x 5). The 420 days accrued as a member of the EPS will be lost.

The Board believes that not addressing the issue of unused sick leave was an oversight in the drafting of the 2016-2018 legislation. This belief is supported by legislation that was passed in 2013 addressing a very similar situation. In that case the individuals were members of CORS and being promoted out of the CORS into EPS positions. The 2013 legislation was drafted specifically to protect the unused sick leave of those individuals who were promoted out of the CORS into the EPS, but who elected not to transfer their CORS service into the EPS. In light of the 2013 legislation, the Board recommends proposing similar legislation for the individuals affected by the 2016, 2017, and 2018 legislation that required them to move into the CORS from the EPS.

Rescission of Designated Beneficiary Change

Section 21-404 allows retirees of the several systems (with the exception of retirees of the Judges' Retirement System), to change their designated beneficiary at any time after they have retired. Retirees who opt to change their designated beneficiary have their allowance recalculated based on the value of the balance in the retiree's annuity reserve and pension reserve when the change is made. A change to the designated beneficiary will almost always result in a lower monthly benefit to the retiree. In light of this, it has been the Agency's practice to allow for a rescission of this change up until the first monthly payment following the change. This follows numerous correspondence between the Agency and the retiree, in the Agency's attempts to ensure the retiree comprehends the reduction that will occur as a result of the change in beneficiary. Nevertheless, despite the Agency's best efforts, many retirees continue to be taken aback once they receive their first benefit check and see the new reduction resulting from the change they made for their designated beneficiary. This is evidenced by the number of instances when the retiree has notified the Agency that they did not understand what the Agency communicated to them, and cannot live on their revised monthly retirement benefit after authorizing the Agency to change their beneficiary.

To address this concern, the Board is proposing legislation that would allow for retirees to rescind their prior designated beneficiary change if they notify the Board, in writing, before

the second payment due date following the month the revised retirement benefit becomes due. The Board also proposes that this proposal only be permitted if the newly designated beneficiary is alive at the time the rescission is requested.

Employees', Teachers', and Correctional Officers' Active Death Benefit

If an active member of the EPS or TPS dies after reaching age 55 with at least 15 years of service or after accruing 25 years of eligibility service, regardless of age, the member's spouse may elect to receive a survivorship benefit equal to what the member would have received, had the member been retired at the time of death and selected Option 2 (a 100% joint and survivor allowance, subject to an actuarial reduction). Spouses of deceased active members of the ERS, TRS, and CORS are entitled to a similar benefit if the active member dies after reaching age 55 with at least 15 years of service. Additionally spouses of deceased active members of the EPS, ERS, TPS, TRS, or CORS also may elect to receive this death benefit if, at the time of death, the member was eligible to retire from the member's system.

The provisions governing death benefits for active members of the SPRS and the Law Enforcement Officers Pension System (LEOPS) provide that if an active member of either of these systems dies with at least two years of eligibility service, regardless of age, the surviving spouse of the member shall receive an allowance equal to 50% of the members average final compensation. If there is no surviving spouse, or if the surviving spouse dies, the benefit is paid to any children under the age of 26 years or disabled. A surviving child who is disabled, may receive this benefit as long as the child is disabled, regardless of age. The SPRS and LEOPS also provide that if there is no spouse or minor or disabled child, the benefit may be paid to the member's dependent parents. Similar active death benefits are paid to spouses and minor children of deceased members of the Judges' Retirement System.

It is notable that the EPS, ERS, TPS, TRS, and CORS do not extend the Option 2 active death benefit to minor children of the deceased active members. The Board believes this may have been an oversight when extensive updates were enacted recently by the legislature for all death benefit provisions and recommends that the Joint Committee consider extending the active death benefit to minor children of deceased active members. The Board has asked the System's actuary to determine the cost for such a change.

Modification of Municipal Pension Surcharges

The 2011 legislative reforms substantially revised the benefit provisions and employee contribution rates for the MSRPS Municipal Employees' Combined System. When plan changes such as the 2011 reforms affect different PGUs differently, equity relationships can be affected to the systematic benefit of some and to the systematic detriment of others. It is recommended that legislation be introduced to convert or phase in a more equitable allocation of contribution requirements among the PGUs.

The 2011 reforms caused the pooled employer cost to decrease by about 2% of pay. Most of that decrease was due to the increase in employee contribution rates for the Alternate Contributory Pension Selection (ACPS) participants, from 5% to 7%. PGUs with participants subject to the Non-Contributory Pension Benefit (NCPB) or the Employees' Contributory Pension Benefit (ECPB) (nine employers) benefitted from the decrease in employer contributions although there was no offsetting increase in employee contributions from their NCPB and ECPB participants. This was the result of a specific provision included in the 2011 reforms that exempted these nine employers from having to participate in the Reformed Contributory Pension Benefit.

The Board of Trustees is recommending the establishment of a new surcharge of 2% of pay for each of the nine employers participating in the NCPB or ECPB. Because of the magnitude of the proposed changes to the employer contribution rate and the impact on these nine PGUs, the Board is also recommending these changes be implemented over a period of five years. This 5-year phase-in would begin with the December 2020 billing and would be fully implemented by the December 2021 billing.

Reopening Disability Claims

Staff has reported several instances where shortly after a member of the several systems has been awarded a disability retirement benefit, staff has learned of information indicating that the individual never was eligible for the benefit. For example, the Agency, after granting a disability benefit, learned of an administrative determination by the former employer that the applicant acted with willful negligence during the occurrence of the allegedly disabling accident. However, current provisions of the State Personnel and Pensions Article do not explicitly address the Board's authority when presented with such facts. In another example, after awarding a disability retirement benefit, it was learned the applicant had accepted a higher paying job in the same field at a federal agency while the applicant was applying for her disability retirement from the State. For this reason, the Board is recommending proposing legislation that would provide the Board with the express statutory authority to reopen and reevaluate a disability award when the Agency receives information, post-award, that the retiree may have been ineligible for the benefit at the time of the award.

Queen Anne's County Joining the CORS

Legislation enacted in 2017 requires the Board to recommend legislation to the Joint Committee for certain eligible governmental units seeking to join either the EPS, CORS, or LEOPS. If the employees of an eligible governmental unit are participating in a plan that has a different employee contribution rate than the employee contribution rate of the new plan or if the eligible governmental unit does presently not provide for the employee pickup of member contributions, it must seek legislation to enter the EPS, CORS, or LEOPS.

Queen Anne's County is seeking to move its correctional officers from the EPS to the CORS. Since the EPS employee contribution rate is 7%, while the CORS employee contribution

rate is 5%, Queen Anne's County will need special legislation to address the status of the existing employees that are currently employed and will remain employed as correctional officers after Queen Anne's County moves them into the CORS. As a result, the Board is requesting the Joint Committee to sponsor this legislation on behalf of Queen Anne's County.