

**ADMINISTRATIVE COMMITTEE MINUTES
BOARD OF TRUSTEES
MARYLAND STATE RETIREMENT AND PENSION SYSTEM**

October 4, 2022

The Administrative Committee meeting convened, via WebEx conference call, beginning at 9:30 a.m.

The Committee Members present included:

Kenneth Haines, Chairman, Presiding	Jamaal Craddock
Richard Norman, Vice Chairman	Dereck Davis
Linda Allen	Marc Nicole
Thomas Brandt	Robert Sandlass

Agency Staff members attending included: Martin Noven, Executive Director/Board Secretary

Robert Diehl	Van Lewis	Ken Reott
Anne Gawthrop	Tom Montanye	David Rongione
Michael Golden	Megan Myers	Janet Sirkis
Angie Jenkins	Andy Palmer	
Harris Kaplan	Kim O'Keeffe	

Assistant Attorneys General present included: Rachel Cohen and Emily Spiering

Other attendees included: David Brinkley (DBM); Jonathan Martin, Laura Atas and Megan Schutz (Treasurer's Office); and John Pepys, Kate Kemmerer, Michael Rubenstein, Michael Wayys, Phillip Anthony and Tyler Babich.

Call Meeting to Order Mr. Haines, Chairman of the Administrative Committee, having established that there was a quorum present, called the meeting to order. He asked the Committee if there were any changes to the agenda. Having heard no requests for changes by the Committee, the agenda was adopted, as presented.

Minutes On a motion made by Mr. Norman and seconded by Mr. Brandt, the Administrative Committee approved the September 6, 2022 open session meeting minutes.

Board Requested Legislation Ms. Gawthrop presented three legislative proposals recommended by staff for consideration by the Administrative Committee. Ms. Gawthrop recommended that the Administrative Committee recommend that the Board of Trustees present the following legislative proposals to the Joint Committee on Pensions (JCP), for the JCP's consideration to sponsor as legislation for the 2023 session.

Technical Clarification – Return of Accumulated Contributions: Currently, there is no provision in the State Personnel and Pensions Article that authorizes the Agency to refund the member contributions of a deceased non-vested former member to the deceased member's designated beneficiary, or if there is no beneficiary, to the deceased member's estate. When the Agency has been faced with the death of a non-vested former member, the current practice of the Agency has been to make such a distribution to the designated beneficiary of the deceased non-vested member, or if there is no designated beneficiary, to the deceased former member's estate. This legislation would codify the Agency's existing practice.

Correctional Officers' Retirement System – Modification to Chapters 218 and 219 of 2016, Chapters 688, 689, and 690 of 2017, Chapters 579 and 580 of 2018; and Chapter 147 of 2022:

➤ *Sick Leave Correction:* Chapter 147 of 2022 provides that members of the

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Employees' Pension System (EPS) or Employees' Retirement System (ERS) who are employed by the Department of Juvenile Services (DJS) serving as certain case management specialists or group life managers on or before June 30, 2022, will be transferred to the Correctional Officers' Retirement System (CORS) on July 1, 2022. In the past, when similar legislation has been enacted that transferred certain groups from the EPS or ERS to the CORS, those bills included provisions that preserved any unused sick leave that had been earned in the EPS or ERS prior to being transferred to the CORS. This provision was inadvertently omitted from Chapter 147. Staff is recommending legislation to correct this oversight and preserve the unused sick leave accrued in the EPS or ERS by the DJS employees who were transferred into the CORS on July 1, 2022.

➤ *Opt-out Election to Move to Transfer Service to the CORS:* Chapters 218 and 219 of 2016, Chapters 688, 689, and 690 of 2017, Chapters 579 and 580 of 2018, and Chapter 147 of 2022 each transferred various groups of employees from the EPS or ERS to the CORS. The affected employees were employed on and before the effective date of each of these bills by either the Department of Public Safety and Correctional Services (DPSCS) or DJS. While each bill required the impacted employees to begin membership in the CORS, provisions of each bill also allowed these employees to elect to transfer their EPS or ERS service into the CORS.

These bills have had a significant impact on the retirement benefits of the members that were moved from the EPS to the CORS. The benefit multiplier for the EPS is 1.4% for each year of service earned prior to July 1, 1998, and 1.8% for each year of service earned on or after July 1, 1998. The CORS benefit multiplier is 1.82% for all service, regardless of when it is earned. Additionally, an individual who became a member of the EPS prior to July 1, 2011, is eligible for an unreduced service retirement allowance after accruing 30 years of eligibility service, regardless of age, or after reaching age 62, with five years of eligibility service. An individual who becomes a member of the EPS on or after July 1, 2011, is eligible for an unreduced service retirement allowance after satisfying the Rule of 90 or reaching age 65 with 10 years of eligibility service. (The Rule of 90 is satisfied when the member's age plus service equals 90.) These eligibility provisions contrast considerably with the eligibility provisions for CORS, which require a member to accrue 20 years of eligibility service, regardless of age, or reach age 55 with five years of eligibility service if the individual became a member prior to July 1, 2011, or age 55 with 10 years of eligibility service if the individual becomes a member on or after July 1, 2011.

Following the passage of the 2016, 2017, and 2018 legislation, the Agency reached out to all members affected by the legislation, alerting them to the deficiencies they would incur if they transferred from the EPS to the CORS. Yet, even with carrying a deficiency on their accounts after transferring to the CORS, the Agency determined that in every case, it was beneficial to the member to still transfer. The increase to their retirement from the CORS, with the actuarial reduction of the deficiency, was always greater than the retirement allowance they would receive if they did not transfer their EPS service. Nevertheless, many members, fearful of carrying a large deficiency on their account, not trusting that even with paying the deficiency their CORS benefit would still be higher after transferring this service, and not fully understanding the decision before them, elected not to transfer their previous EPS service into the CORS.

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With this information, we would now recommend that the 2016, 2017, and 2018 legislation be amended to require all members to transfer, unless an affirmative declaration to opt-out is made.

Staff recognizes that this legislation will have a cost and is working with its actuary to determine the impact it would have on the System.

Following Ms. Gawthrop's presentation of the proposal, Treasurer Davis expressed his concern that the proposal could create a precedent to allow members to change other decisions.

Mr. Noven responded that this legislation would only impact members who failed to make a decision and were defaulted into a solution that was not in the best interest of most, if not all, of our members.

Ms. Cohen further responded that Title 37 of the State Personnel and Pensions Article, allows a member to transfer service credit from one system to another when the member changes employment that requires a change in plan membership. There is a distinction between those transfers, in which the members change employment and the current situation presented here, in which these members were involuntarily moved from the EPS to CORS by special legislation.

Mr. Sandlass asked if there were any additional costs to the employees.

Ms. Gawthrop responded that while the member would be responsible for any contribution deficiency on their account as a result of the transfer, that increased benefits would more than offset the amount of the deficiency, even in cases in which the deficiency was not addressed prior to retirement.

Ms. Allen asked what the process is for notifying the members of this change in legislation.

Mr. Reott responded that a letter would be sent to each member effected by the legislation notifying them of the change, the deficiency amount, if any, options for repayment and the deadline to do so.

Ms. Allen asked if there was a way to show each member a comparison of their accounts.

Mr. Reott responded that comparison estimates were sent out to members when the original legislation was passed and could be done again if this legislation is passed.

Administrative Fees – Amount and Timing of Billings: Prior to July 1, 2011, the administrative budget for the Agency, based on statutory authority, was funded solely through special funds drawn down from the pension trust fund. Chapter 397 of 2011 changed this process and now requires the Agency to apply a per employee charge on all employers participating in the System. This proposal by staff would seek to simplify the administrative fee process for both the Agency and the participating employers of the System.

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To calculate the amount owed by the State and each local participating employer, the Agency determines the number of employees for each employer that are also members of the several systems as of June 30 of the second prior fiscal year and divides this number by the current member total of the System. This percentage is applied to the allowance the Governor includes in the budget bill for the upcoming fiscal year. Each participating employer, including the State, then is notified of the amount they will be required to pay for administrative fees to the Agency for the next fiscal year. It is important to note that this calculation is based on the allowance the Governor includes in the budget bill for the operating budget of the Agency, and not the actual amount that is appropriated for the Agency, once the budget bill is passed. Consequently, even before the legislative session has ended, the certified amount billed to the participating employers that each will be required to pay in administrative fees has been changed. The State is required to pay this amount to the Agency on July 1 of the appropriate fiscal year, while local participating employers must pay their portion on a quarterly basis to the Agency (October 1, January 1, April 16, and June 1).

Because the amount of administrative fees certified to the participating employers of the System is based on the Governor's allowance and not the final appropriation or actual expenditures for the Agency, the Agency is required to track any over or under payments made by the System's participating employers and recoup or refund these differences on or before June 30 of the second following fiscal year through the administrative expenses billed for that year to the participating employers. Additionally, any budget amendments that occur throughout the current fiscal year for administrative expenses are to be paid from the System's accumulation fund.

The Agency and DBM both feel this is a process that could be simplified. Rather than certify a rate for administrative expenses based on an allowance that has never been the actual appropriation, let alone what is actually spent by the Agency in that fiscal year, it is recommended that the rate for administrative expenses be based on the actual amount that the Agency spent during the second previous fiscal year. Moreover, if the Agency certifies the rate due by the State and local employers for administrative expenses based on the prior year's actual spending, the Agency could certify this rate as early as the September immediately prior to the fiscal year in question. This would provide both the State and local employers with an additional five months to plan for this expense in their budgets.

On a motion made by Mr. Brandt and seconded by Ms. Allen, the Administrative Committee approved the legislative proposal as presented, for recommendation to the Board of Trustees.

Proposed
Amendments
to COMAR
22.03.04 –
Procedures for
Hearings by or
for the Board
of Trustees

The Committee was presented with a memorandum and proposed amendments to COMAR 22.03.04 – Procedures for Hearings by or for the Board of Trustees for its review and consideration.

Ms. Cohen reported that this regulatory chapter had not been updated since 2004 and if the Administrative Committee recommends that the Board of Trustees vote to adopt the amendments, it would be sent to the Administrative, Executive, and Legislative Review Committee, and published for comment in the Maryland Register.

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Ms. Spiering reported that among other changes indicated in the document provided to the Committee, staff recommends the following substantive amendments:
Among other changes indicated in the attached draft, the Agency recommends the following substantive amendments:

- 22.03.04.02.08 (Definitions – Party) is revised to make clear that a participant or participating employer may intervene in an administrative appeal if allowed under regulations adopted by the Office of Administrative Hearings (“OAH”). OAH permits intervention by a person claiming an interest relating to the subject matter of the hearing that is adversely affected and not adequately represented by the existing parties, or when a person has an unconditional right to intervene as a matter of law.
- 22.03.04.03 (Application) Section C is added to clarify that administrative hearings before the Board of Trustees and Administrative Committee are quasi-judicial proceedings and are exempt from the requirements of the Open Meetings Act.
- 22.03.04.07C (Petitions for Hearing – Review by Executive Director) Section C is modified to permit the Executive Director to reject a deficient petition that does not provide all of the information required in section B of the regulation, but also requires the Executive Director to provide a claimant with written notice of the deficiencies and up to 45 additional days to submit an amended petition.
- 22.03.04.07E (Petitions for Hearing – Alternative Dispute Resolution) Section E establishes procedures for referral of a petition for alternative dispute resolution by agreement of all parties, through non-binding mediation with a neutral mediator or an unmediated settlement conference with the Executive Director.
- 22.03.04.09A (OAH Pre-Hearing Procedures) Section A is updated to provide additional pre-procedures, including a process for exchange of witness lists, similar to procedures provided by the Board for hearings regarding disability retirement benefits under COMAR 22.06.
- 22.03.04.09G (Revocation of Delegation) Section G is added to establish criteria and procedures for revocation of the delegation of hearing authority to OAH, in accordance with the Administrative Procedures Act.

On a motion made by Mr. Nicole and seconded by Ms. Allen, the Administrative Committee voted to propose for adoption the proposed amendments to COMAR 22.03.04 – Procedures for Hearings by or for the Board of Trustees, by sending this amended chapter to the Administrative, Executive and Legislative Review Committee, and publishing it for comment in the Maryland Register.

Member
Services Update

Mr. Reott provided a Member Services performance update as of September, 2022 to the Committee.

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Mr. Reott reported that at the last committee meeting, Trustee Sandlass asked for the average call-back time and if the average wait time included call-back times. Mr. Reott reported that the average wait time before the call is answered does not include callbacks and explained that the call-back time would be the same as if the member remained in the queue.

Mr. Reott reported that the FY23 average call abandonment rate is 14.49%, which is trailing last year's average of 10.98%. Mr. Reott reported that the call summary section of the report reflects that the unit was offered 35,208 calls in the first three months of FY23, which is a 5.3% increase in calls over the same period last year. The hot topics continue to be the cost-of-living increases, refunds, and direct deposit questions.

Mr. Reott reported that the correspondence section of the report reflects that the unit received 6,467 pieces of correspondence in the first three months of FY23, which is an increase of 4.5% over the same period last year.

Mr. Brandt asked about the management of the HR pipeline and the status of having people "on deck" to fill positions as they become available.

Mr. Reott responded that Mr. Noven has been working with staff at the Department of Budget and Management to get an open and continuous recruitment for those positions, as it currently takes six weeks from posting to obtain an eligibility list to recruit for each vacant position. Mr. Reott further responded that staff has also streamlined the training process for that unit and have asked for additional PINs in the FY24 budget request.

Adjournment

There being no further business before the Committee, on a motion made by Mr. Brandt and seconded by Mr. Norman, the meeting adjourned at 10:33 a.m.

Respectfully submitted,



Martin Noven,
Secretary to the Board