

ANNE ARUNDEL COUNTY PENSION OVERSIGHT COMMISSION

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April 3, 2022

Via: Electronic mail

County Executive Steuart Pittman
Anne Arundel County
44 Calvert Street
Annapolis, MD. 21401

Mr. Pittman,

In accordance with the procedures set forth in the County Charter, the Pension Oversight Commission has reviewed the proposed legislation presented in Bill 27-22 as introduced by Council Chair Lisa Rodvien on your behalf. Following our review, we **SUPPORT** passage of Bill 27-22 as drafted. Bill 27-22 allows for retired participants of the Police and Fire Pension Systems who, prior to the legalization of same-sex marriage in Maryland, elected a reduced, annuity benefit to provide for survivor benefits for their same-sex partners.

In January of 2013, after a legislative and referendum effort, the State of Maryland enacted the Civil Protection of Marriage Act, legalizing same-sex marriage in the State. Before this point, same-sex partners were legally barred from marrying in Maryland. On June 26, 2015 the Supreme Court of the United States held that the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment guarantee a same-sex couple the fundamental right to marriage. *Obergefell v. Hodges*, 576 U.S. 644 (2015). The Court's decision highlighted the harm inflicted by such bans, including the denial of the "constellation of benefits that the States have linked to marriage." *Id.* at 670.

In Anne Arundel County, the right to the fullest pension benefits is just such a right tied to marriage. Those that are married at the time of the employee's retirement are entitled to their fully calculated benefit and the full benefits to their survivors. An alternate option exists to designate a non-marital survivor, but at a reduced benefit.

For those that were legally barred from marriage at the time of their retirement, prior to the passage of the Civil Protection of Marriage Act, the only option to provide a survivorship benefit for their same-sex partner was to select the reduced, annuity option. Those who, but for the legal bar on their union, would have been legally entitled to the full benefit, have been burdened with the lingering denial of the full benefit. This continued denial has been unabated despite the Supreme Court's holding that the initial denial of marital status which predicated the denial of the full, marital benefit, was contrary to the fundamental rights of retirees. Bill 27-22 seeks to rectify this longstanding wrong. The bill would make whole those retirees who have since exercised that fundamental right by marrying the person to whom they had designated as their contingent annuitant.

This Bill only applies to those who retired prior to the lifting of Maryland's same-sex marriage prohibition in 2013, who selected their same-sex partner as a contingent annuitant, and have since married that partner. It provides for a full restoration of the retirees' pension benefits, prospectively. Additionally, it entitles the retirees to a restoration of the prior, reduced benefit up to January 1, 2023, thus capping the lump-sum payment and eliminating fiscal uncertainty. The fiscal note that accompanies this bill identifies a liability of approximately \$250,000 to the pension system. This is equal to one hundredth of one percent. The Commission believes this amount is easily affordable, particularly in light of the wrong this Bill intends to right and the fact that the pension system should be calculating the expectation of full benefit payments from the start.

Because Bill 27-22 is an affordable means to correct a longstanding wrong based upon an unconstitutional denial of a fundamental right and the benefits that attach thereto, the Pension Oversight Commission recommends that the County Council **SUPPORT** Bill 27-22.

Sincerely,

Anne Arundel County Pension Oversight Commission:

A handwritten signature in black ink, appearing to read "Michael Shier". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Michael Shier, Chair

Robert Stull, Secretary; Susan Duncan; Jamie McIntosh; Ed Gosselin; Sherri Voelkel, Mark Humphries, Joe Brent

CC: Anne Arundel County Council: Sarah Lacey; Alison Pickard; Nathan Volke; Andrew Pruski; Amanda Fiedler; Lisa Rodvien; Jessica Haire
County Council Administrative Officer Laura Corby, Personnel Officer Anne Budowski