

Title 22

STATE RETIREMENT AND PENSION SYSTEM

Subtitle 03 BOARD OF TRUSTEES

22.03.05 Subpoenas

Authority: State Personnel and Pensions Article, §21-111, Annotated Code of Maryland

Notice of Proposed Action

[21-130-P]

The Board of Trustees for the State Retirement and Pension System proposes to adopt new Regulations .01—.05 under a new chapter, **COMAR 22.03.05 Subpoenas**. This action was considered at the June 15, 2021, Board of Trustees meeting for the State Retirement and Pension System.

Statement of Purpose

The purpose of this action is to implement the Board of Trustees' statutory power to issue administrative subpoenas, as well as a proposed administrative subpoena form.

The Board has power to issue administrative subpoenas pursuant to State Personnel and Pensions Article, §21-111(a)(1)(ii), Annotated Code of Maryland. That law authorizes the Board, as it "considers necessary to properly administer and enforce" the pension laws, to "issue a summons, subpoena, or other process, for the attendance of witnesses and the production of documents" before the Board. It is reasonable to interpret that language as authorizing subpoenas not only for quasi-judicial administrative hearings, but also for other matters subject to the Board's review and decision, including administrative investigations.

The proposed regulations seek to implement the Board's statutory subpoena power in a balanced fashion, with lawfully broad scope but within appropriate administrative constraints:

COMAR 22.03.05.01A authorizes the Board to issue subpoenas to compel witness attendance, document production, or both, while COMAR 22.03.05.01B allows the exercise of that power only by the Board itself or the Executive Director as its delegee.

COMAR 22.03.05.02 creates two routes for issuing a subpoena. The first and more common route, under 22.03.05.02A, is for the Executive Director to sign off on a subpoena and issue it after review by the Office of the Attorney General, and with notice to the Board. The second route, under 22.03.05.02B, would apply only in the rare event that the Board chose to hold a full evidentiary hearing of an administrative appeal before the Board itself under 22.03.04.08, rather than by summary decision or by referral to the Office of Administrative Hearings.

COMAR 22.03.05.03 specifies a subpoena's required contents.

COMAR 22.03.05.04 specifies appropriate means for serving a subpoena. Within Maryland, service is permissible by any method authorized by Maryland Rule 2-510(d). Service outside of Maryland is permissible by any method authorized in the receiving jurisdiction. Importantly, to support the enforceability of the subpoena, if contested, the Agency, on behalf of the Board, must retain proof of service of the subpoena.

COMAR 22.03.05.05 allows for requests to the appropriate circuit court for modification, quashing, or enforcement of a subpoena.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Anne E. Gawthrop, Esq., Director of Legislative Affairs, State Retirement Agency, 120 East Baltimore Street, 16th Floor, Baltimore, MD 21202, or call 410-625-5602, or email to agawthrop@sra.state.md.us, or fax to 410-468-1710. Comments will be accepted through October 12, 2021. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Board of Trustees for the State Retirement and Pension System during a public meeting to be held on November 16, 2021, at 1 p.m., via live stream from the Agency's website.

.01 Subpoena Power.

A. The Board of Trustees may issue a subpoena as the Board of Trustees considers necessary to:

- (1) Properly administer and enforce State Personnel and Pensions Article, Division II, Annotated Code of Maryland, and COMAR Title 22; and*
- (2) Compel any person served with the subpoena to:*
 - (a) Attend and testify as a witness at a hearing before the Board of Trustees;*
 - (b) Produce documents and tangible items; or*
 - (c) Both attend and testify as a witness at a hearing before the Board of Trustees and produce documents and tangible items.*

B. Except as provided in Regulation .02B(2) of this chapter, the Board of Trustees exercises its subpoena power by and through the Executive Director of the Retirement Agency as the Board of Trustees' delegee.

.02 Issuance of Subpoena.

A. Subpoenas Issued by the Executive Director.

(1) Except as provided in §B of this regulation, and in accordance with Regulation .01A of this chapter, the Executive Director may issue a subpoena on behalf of the Board of Trustees, without prior review and approval by the Board of Trustees.

(2) *The Office of the Attorney General shall review and approve the subpoena for legal sufficiency before the Executive Director may sign and issue the subpoena.*

(3) *The Executive Director shall notify the Board of Trustees of the issuance of a subpoena pursuant to this section.*

B. Subpoenas for Evidentiary Hearings Issued by the Board of Trustees Under COMAR 22.03.04.08.

(1) *On request of a party to an evidentiary hearing before the Board of Trustees under COMAR 22.03.04.08, or upon its own motion, the Board of Trustees may issue a subpoena requiring the attendance and testimony of witnesses and the production at the hearing of one or more tangible items in the possession or under the control of a witness.*

(2) *A subpoena may be issued to a party under this section at the sole discretion of the Board of Trustees, and shall be signed by the Board Chair.*

(3) *A party requesting a subpoena shall make the request in writing, filed with the Board Secretary, and served on all other parties.*

(4) *Except in the case of exigent circumstances adequately documented for the Board of Trustees, a party requesting a subpoena shall file the request at least 30 days before the date of an administrative hearing in order to allow the Board of Trustees to consider the request at its next regularly scheduled meeting.*

.03 Subpoena Contents.

A. A subpoena shall:

(1) *Identify by descriptive title the investigation, administrative or enforcement matter, or contested case for which it is issued;*

(2) *Identify the name and full address of the intended recipient of the subpoena;*

(3) *Identify the name, full address, and telephone number of the requestor of the subpoena;*

(4) *If the subpoena requires attendance at an evidentiary hearing before the Board of Trustees, specify the date, time, and place of the hearing;*

(5) *If the subpoena requires production of documents or tangible items:*

(a) *Describe with reasonable specificity the documents and tangible items to be produced; and*

(b) *Specify the date, time, and place for the required production;*

(6) *State the issuance date of the subpoena; and*

(7) *Contain the signature of:*

(a) *The Executive Director of the Retirement Agency, for subpoenas issued under Regulation .02A of this chapter; or*

(b) *The Board Chair, for subpoenas issued under Regulation .02B of this chapter.*

B. If the subpoena compels the production of financial information, or information derived from financial records, the subpoena shall certify that the requestor has taken all necessary steps to comply with the requirements of Financial Institutions Article, §1-304, Annotated Code of Maryland.

C. If the subpoena compels the production of medical records, the subpoena shall certify that the requestor has taken all necessary steps to comply with the requirements of Health-General Article, §4-306, Annotated Code of Maryland.

.04 Service of Subpoena.

A. A signed and issued subpoena may be served within the State of Maryland by any method authorized by Maryland Rule 2-510(d).

B. A signed and issued subpoena may be served outside the State of Maryland by any method authorized by the law of the jurisdiction where the subpoena is served.

C. The party serving the subpoena shall retain proof of service of the subpoena.

.05 Modification, Quashing, or Enforcement of Subpoena.

A. A person properly served with a subpoena under this regulation may request modification or quashing of the subpoena or other relief by petition to the appropriate circuit court.

B. If a person properly served with a subpoena under this regulation does not appear or produce documents or tangible items as the subpoena requires, the requestor of the subpoena may apply to the appropriate circuit court for enforcement of the subpoena.

MARTIN M. NOVEN
Executive Director
State Retirement Agency