

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 36 (Delegate Smigiel)
 Judiciary

Public Safety - Handgun Permit - Applicant Qualifications

This bill repeals the requirement that an applicant have a “good and substantial reason” to wear, carry, or transport a handgun before the Secretary of State Police may issue a handgun permit to the person.

Fiscal Summary

State Effect: General fund revenues increase by \$7.5 million in FY 2015 from the issuance of additional handgun permits and the payment of associated fees. General fund expenditures for the Department of State Police (DSP) increase by \$3.6 million in FY 2015 to process additional handgun permit applications. Future years reflect annualization, inflation, automobile replacement in FY 2018, and the licensure issuance and renewal cycle. Future years also reflect a decrease in new permit applications and renewals over time.

| (in dollars) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | \$7,500,000 | \$6,375,000 | \$9,918,800 | \$8,656,000 | \$6,525,100 |
| GF Expenditure | \$3,638,100 | \$3,757,500 | \$4,112,300 | \$4,463,000 | \$4,323,100 |
| Net Effect | \$3,861,900 | \$2,617,500 | \$5,806,400 | \$4,193,000 | \$2,202,000 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful. It is assumed that the bill leads to an increase in the number of handgun carry permits sought in the State. Small businesses that provide firearm instruction may benefit from an increase in the demand for their services. The extent to which more or fewer handgun purchases are sought cannot be reliably estimated.

Analysis

Current Law: Generally, with certain exceptions, to be issued a permit to carry a handgun by the Secretary of State Police, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if the person is younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to the applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding that the permit is necessary as a reasonable precaution against apprehended danger. The Secretary may limit the geographic area; circumstances; or times of day, week, month, or year in which a permit is effective.

A handgun permit application costs \$75; two years after the initial permit and every three years thereafter, a \$50 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks for initial applications and renewals.

Chapter 427 of 2013 (the Firearm Safety Act of 2013) requires a handgun permit applicant to successfully complete prior to the application and each renewal, a firearms training course approved by the Secretary that includes (1) for an initial application, a minimum of 16 hours of instruction by a qualified handgun instructor, or 8 hours of instruction for a renewal application; (2) classroom instruction on State firearm law, home firearm safety, and handgun mechanisms and operation; and (3) a firearms qualification component that demonstrates the applicant’s proficiency and use of the firearm.

Background: There are about 14,000 active handgun permits in Maryland. Since 2009, DSP has received an average of about 1,800 initial and 2,100 renewal nonpolice-related applications per year, including renewal applications from retired law enforcement personnel. It generally takes DSP less than two days to receive the results of a national criminal history records check from the Federal Bureau of Investigation and approximately 135 days to process, investigate, and issue a permit. DSP has denied an average of less than 6% of nonpolice-related applications annually, on the basis of a finding that the person did not have a “good and substantial reason” for the permit.

Nationally, states' laws and requirements governing carry and concealed carry permits vary. According to a July 2012 report by the U.S. Government Accountability Office, the number of states allowing concealed carry permits is increasing, and states broadly differ in eligibility requirements. For example, until 2011, Wisconsin did not issue carry permits. In that year, Wisconsin became a shall-issue state and 65,921 permit applications were received in the first two months. For calendar 2012, the first full year of operation, Wisconsin received an additional 98,867 applications. By population, Maryland and Wisconsin are similar.

The fiscal 2014 budget included \$4.2 million to implement Chapter 427 and cover related costs, which included 35 new positions, contractual services, and supplies and materials. The Governor's proposed fiscal 2015 budget carries over costs for the 35 new positions and 31 contractual employees, but one-time start-up funding for technology and equipment is eliminated. DSP also received a \$400,000 general fund deficiency appropriation in fiscal 2013 and \$450,000 in general funds in the fiscal 2014 budget to automate and streamline the current and new firearm application processes.

During and after the 2013 legislative session, the DSP Licensing Division was overwhelmed with new applications for firearm purchases, including assault weapons and handguns, which resulted in a backlog of applications to be processed. During the first nine months of 2013, 115,012 firearms transfer applications were received by DSP; more than 15,000 of those applications came in the final 10 days of September. Handgun sales alone peaked in September 2013, with 27,840 reported sales. In October 2013, handgun sales dropped dramatically, down to 3,654.

State Revenues: The Department of Legislative Services (DLS) estimates that this bill increases new handgun permit applications by about 100,000 in fiscal 2015, and thus imposes an operational burden on DSP to issue additional handgun permits. This is due in part to the surge in sales during calendar 2013, and assumes a similar experience to that which was experienced in Wisconsin in 2012 when nearly 99,000 additional carry permit applications were received. As is stated above, it takes about 135 days to process, investigate, and issue a permit.

Accordingly, assuming an increase of about 100,000 permit applications in fiscal 2015, general fund revenues from handgun permit fees increase by an estimated \$7.5 million in fiscal 2015. By fiscal 2019, the increase in general fund revenues for initial applications and renewals decreases to \$6.5 million; this estimate assumes that, over time, initial handgun permit applications decline by 15% per year, and that the total number of permits renewed decreases by 10% annually. **Exhibit 1** shows the estimated increase in general fund revenues from additional handgun permit fees through fiscal 2019.

Exhibit 1
Estimated Handgun Permit Fee Revenue under the Bill

| | <u>FY 2015</u> | <u>FY 2016</u> | <u>FY 2017</u> | <u>FY 2018</u> | <u>FY 2019</u> |
|----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| New Apps. | 100,000 | 85,000 | 72,250 | 61,413 | 52,201 |
| Fee Revenue | \$7,500,000 | \$6,375,000 | \$5,418,750 | \$4,605,975 | \$3,915,075 |
| Renewals | - | - | 90,000 | 81,000 | 72,900 |
| Fee Revenue | - | - | 4,500,000 | \$4,050,000 | \$2,610,050 |
| Total Revenue | \$7,500,000 | \$6,375,000 | \$9,918,750 | \$8,655,975 | \$6,525,125 |

Source: Department of Legislative Services

State Expenditures: General fund expenditures for DSP increase by an estimated \$3,638,093 in fiscal 2015, which reflects the bill's October 1, 2014 effective date. This estimate reflects the cost to hire 10 full-time troopers, 18 office services clerks, and 44 contractual background check investigators to process and issue the additional handgun permit applications, review and issue renewal permits, and prepare information relating to hearings. It includes salaries and fringe benefits, one-time start-up costs, and ongoing operating expenses.

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|--|--------------------|
| Positions (Permanent) | 28 |
| Positions (Contractual) | 44 |
| Salaries and Fringe Benefits (Permanent) | \$1,330,562 |
| Salaries and Fringe Benefits (Contractual) | 1,306,834 |
| Motor Vehicle Purchases and Operations | 354,530 |
| Additional Police and Civilian Equipment | 377,955 |
| Other Operating Expenses | <u>268,212</u> |
| Total FY 2015 DSP Expenditures | \$3,638,093 |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and automobile replacement costs in fiscal 2018. Although DSP also projects considerable trooper and civilian overtime costs in fiscal 2015 (\$6.3 million), as well as 33 more contractual positions, DLS believes that such needs are unclear going forward due to the new resources, including personnel, for the Licensing Division provided in both the fiscal 2014 budget and the Governor's proposed fiscal 2015 budget (as discussed above). Should overtime or additional personnel costs emerge, it could be handled through the annual budget process.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Comments: In *Woollard v. Gallagher* (No. 12-1437), the U.S. Court of Appeals for the Fourth Circuit considered the constitutionality of Maryland's "good and substantial reason" handgun permit requirement. On March 21, 2013, the Fourth Circuit reversed the District Court opinion and Maryland's "good and substantial" requirement was upheld as constitutional.

Two cases relating to Maryland firearms law are pending:

Kolbe v. O'Malley: This case, originally filed under the name *Tardy v. O'Malley*, is pending in the U.S. District Court for the District of Maryland. The suit seeks to have the assault weapon and high-capacity magazine bans included in Chapter 427 of 2013 declared unconstitutional under the Second Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment. Judge Blake denied plaintiffs' request for a temporary restraining order to prevent those aspects of the law from going into effect on October 1, 2013. The case is currently in the discovery phase. Motions for summary judgment were due on February 14, 2014.

Doe v. O'Malley: This case anticipated that DSP would be unable to process the handgun qualification license (HQL) mandated for handgun transactions under Chapter 427 in a timely manner and that the result would be a *de facto* moratorium on handgun sales in Maryland. Judge Catherine Blake denied plaintiffs' request for a temporary restraining order to delay the effective date of the HQL requirement for 90 days. Although the case remains active on the court's docket, plaintiffs have entered an agreement deferring the State's obligation to respond to the complaint unless and until it is amended.

Additional Information

Prior Introductions: Many bills have been introduced in prior years to repeal or alter the "good and substantial reason" standard for the issuance of a handgun permit. In 2013, both HB 38 and HB 211 received a hearing in the House Judiciary Committee, but no further action was taken on either bill. In 2012, both HB 45 and HB 1135 received a hearing in the House Judiciary Committee, but no further action was taken on either bill.

Cross File: None.

Information Source(s): Department of State Police, U.S. Government Accountability Office, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2014
mc/lgc

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