

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 154
Judiciary

(Delegate Cluster)

**Law Enforcement Officers' Bill of Rights - Administrative Hearing -
Reimbursement of Costs and Fees**

This bill requires a hearing board, following a finding of not guilty that terminates the action under the Law Enforcement Officers' Bill of Rights (LEOBR), to award a law enforcement officer those documented reasonable costs and fees, including attorney's fees, incurred by the officer or the officer's representative as a result of an investigation and hearing.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (multiple fund types) for State law enforcement agencies to pay awards, as discussed below. The extent to which monetary awards for reasonable costs may occur cannot be reliably predicted or quantified. No effect on revenues.

Local Effect: Potential significant increase in local government expenditures for local law enforcement agencies to pay awards, as discussed below. The extent to which monetary awards for reasonable costs may occur cannot be reliably predicted or quantified. No effect on revenues.

Small Business Effect: None.

Analysis

Current Law: LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies. It does not grant collective

bargaining rights. The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR.

If the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board to contest the law enforcement agency's action. The hearing board process is bifurcated. First, the board meets to determine guilt. If the officer is found guilty of the charges, a second hearing is held to determine the level of discipline. A law enforcement officer who has been convicted of a felony is not entitled to a hearing.

The law enforcement agency must give notice to the law enforcement officer of the right to a hearing by a hearing board, which includes the time and place of the hearing, and the issues involved.

Hearing boards for LEOBR purposes must consist of at least three members who (1) are appointed by the chief of the law enforcement agency and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency and (2) have had no part in the investigation or interrogation of the law enforcement officer. At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed.

A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.

The decision, order, or action taken as a result of a hearing must be in writing and accompanied by findings of fact, including a concise statement on each issue in the case. A finding of not guilty terminates the action. A copy of the decision/order, findings of fact, conclusions, and written recommendations for action must be promptly mailed to the law enforcement officer or the officer's counsel/representative and the chief of the law enforcement agency.

The decision of the hearing board as to finding of fact and any penalty is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed. Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. The final order may be appealed.

On written request, a law enforcement officer may have expunged from any file the record of a formal complaint under specified conditions.

A law enforcement officer who is denied a right granted by LEOBR may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted. The officer may apply for the show cause order (1) either individually or through the officer's certified or recognized employee organization and (2) at any time prior to the beginning of a hearing by the hearing board. The court must grant appropriate relief if the court finds that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by LEOBR.

State Expenditures: State expenditures (multiple fund types) increase for any State law enforcement agency that must pay monetary awards for reasonable costs, including attorney's fees, as a result of the bill. Although the overall impact of the bill on State expenditures cannot be reliably estimated because future awards cannot be predicted, numerous State agencies report the potential for additional costs. For example:

- the Department of State Police (DSP) advises that of the 21 total administrative hearings held for troopers within the agency in the last three years, none involved a not guilty finding; however, to the extent any cases arise in which DSP must pay awards under the bill, costs increase by approximately \$8,750 per case, assuming that the average hearing requires 50 hours and the average cost per hour is \$175;
- the Maryland Transportation Authority (MDTA) advises that nonbudgeted expenditures may increase to cover attorney fees; although the MDTA Police review board reviews only a handful of cases each year and although a "not guilty" finding is rare, a simple case could require 30 to 50 hours for an attorney;
- the Maryland Transit Administration within the Maryland Department of Transportation advises that special fund expenditures increase to pay awards, but that any such increase depends on the number of billable hours incurred and the length of the hearings involved and cannot be reliably estimated at this time;
- the Comptroller's Office advises that general fund expenditures increase to pay reasonable costs, which may include dues of a charged officer for union representation (\$390 annually) or outside counsel (average cost of \$200 to \$300 per hour), plus any travel costs;

- Morgan State University reports that it is involved in an estimated two to three hearings each year and that costs increase by an estimated \$2,000 to \$5,000 per hearing;
- Baltimore City Community College estimates that costs increase by approximately \$8,000 per hearing, assuming an average cost of \$400 per hour in attorney fees and 20 hours per case; and
- the Department of Health and Mental Hygiene, the Natural Resources Police within the Department of Natural Resources, and the Maryland Capital Police within the Department of General Services report that administrative hearings and not guilty findings are extremely rare, but that costs increase to the extent any such cases arise.

Local Expenditures: Local government expenditures increase to the extent any local law enforcement agencies must pay awards of reasonable costs pursuant to the bill. The Maryland Municipal League advises that, particularly for larger municipal police departments where administrative hearings are more common, there could be substantial new costs associated with reimbursing police officers found not guilty as a result of LEOBR administrative hearings. Several local law enforcement agencies (Montgomery, Washington, and Worcester counties and Baltimore City) indicate that the bill likely results in a significant increase in costs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Governor's Office of Crime Control and Prevention; Baltimore City Community College; University System of Maryland; Morgan State University; Department of General Services; Department of Health and Mental Hygiene; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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