

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 619

(Delegate Anderson)(By Request - Baltimore City
Administration)

Judiciary

Law Enforcement Officer - Misdemeanor - Hearing and Emergency Suspension

This bill authorizes the chief of a law enforcement agency to impose an emergency suspension of police powers without pay on a law enforcement officer who has been convicted of a misdemeanor with the potential for more than one year imprisonment. Such a law enforcement officer is entitled to a prompt hearing, however the officer is not entitled to a hearing on the issues by a hearing board before the suspension is imposed.

Fiscal Summary

State Effect: The bill's changes are largely procedural in nature and are not expected to have a significant impact on the finances of State law enforcement agencies. Potential minimal decrease in general fund expenditures but only to the extent emergency suspensions without pay increase. Any future impacts on State finances arising from operations or decisions of hearing boards or additional emergency suspensions without pay cannot be reliably predicted.

Local Effect: The bill's changes are largely procedural in nature and are not expected to have a significant impact on the finances of local law enforcement agencies. Any future impacts on local finances arising from the bill's changes cannot be reliably predicted.

Small Business Effect: None.

Analysis

Current Law: The Law Enforcement Officers' Bill of Rights (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. 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.

If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State must function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency is under investigation, the Governor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor, or that official's designee, must function as the chief for LEOBR purposes.

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 hearing board must give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved. Each party may be represented by counsel, has the right to cross-examine witnesses who testify, and may submit rebuttal evidence.

The hearing board may take notice of judicially cognizable facts and general, technical, or scientific facts within its specialized knowledge. An official record, including testimony and exhibits, must be kept of each hearing.

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. 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.

If a law enforcement officer is charged with a *felony*, the chief may impose an emergency suspension of police powers without pay. A law enforcement officer who is suspended is entitled to a prompt hearing.

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.

Additional Information

Prior Introductions: HB 384 of 2015, a similar bill, received a hearing in the House Appropriations Committee, but no further action was taken on the bill.

Cross File: None.

Information Source(s): Baltimore City, Harford and Montgomery counties, City of College Park, Department of General Services, Department of Natural Resources, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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