

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1382
Judiciary

(Delegates Clippinger and Barron)

Judicial Proceedings

Law Enforcement Officers – Public Information

This bill requires that, if a hearing under the Law Enforcement Officers’ Bill of Rights (LEOBR) is open to the public, advance notice of the hearing must be given to the public, and an agenda must be made available to the public, in accordance with the provisions of Maryland’s Open Meetings Act. In addition, if requested within 10 days after the hearing, an audio recording of the hearing must be provided free of charge to a member of the public, and after final action is taken by the head of the law enforcement agency, the findings of fact must be provided to a member of the public on request. Further, if a complaint is filed against a law enforcement officer involved in a death, after final action is taken by the head of the law enforcement agency, a complainant, on written request, must be provided with the findings of fact of any hearing board held and a specified list of sustained charges filed by the law enforcement agency against the law enforcement officer, in accordance with Maryland’s Public Information Act.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures to the extent that requests are made and audio tapes and information are required to be provided under the bill’s provisions. Revenues are not affected.

Local Effect: Potential minimal increase in local government expenditures to the extent that requests are made and audio tapes and information are required to be provided under the bill’s provisions. Local government revenues are not affected.

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 voting 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.

Chapter 519 of 2016 authorizes the chief to appoint, as a nonvoting member, one member of the public who has received training by the Maryland Police Training and Standards Commission (MPTSC) on LEOBR and matters relating to police procedures. If authorized by local law or collectively bargained, the hearing board may include up to two nonvoting or voting members of the public who have received training by MPTSC on LEOBR and matters relating to police procedures.

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 that, if authorized by local law, is subject to binding arbitration. A hearing board formed through the alternative method may also include up to two voting or nonvoting members of the public, appointed by the chief, who have received training administered by MPTSC on LEOBR and matters relating to police procedures.

A law enforcement officer may elect the alternative method of forming a hearing board if the officer works in a law enforcement agency that has negotiated with a collective bargaining unit for an alternative method of forming a hearing board and the law enforcement officer is included in the collective bargaining unit. The law enforcement agency must notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated.

If the law enforcement officer elects the alternative method, that method must be used to form the hearing board. An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board. If the law enforcement officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

The decision of the hearing board as to findings 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.

Maryland Police Training and Standards Commission

MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation

with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

MPTSC must develop a uniform citizen complaint process to be followed by each law enforcement agency. The uniform complaint process must be simple, require that a complainant be informed of the final disposition of the complainant's complaint and any discipline imposed as a result, and be posted on the websites of MPTSC and each law enforcement agency.

Open Meetings Act

Under Maryland's Open Meetings Act, with limited exceptions, a "public body" must (1) provide reasonable advance notice of the time and location of meetings, including whether any portion of the meeting will be in closed session and (2) meet in open session in a location that is reasonably accessible to attendees. A public body is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of "public body" (and therefore the Open Meetings Act) include juries, the Governor's cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

Generally, a public body must make an agenda available to the public prior to meeting in an open session. The agenda must include known items of business or topics to be discussed at the meeting and indicate whether the public body expects to close any portion of the meeting in accordance with State law. The agenda does not have to contain any information pertaining to the closed portion of the meeting. If a public body is unable to comply with specified deadlines for the release of meeting agendas because the meeting is scheduled in response to an emergency or any other unanticipated situation, the public body must make available, on request, an agenda within a reasonable time after the meeting occurs.

Generally, minutes must be prepared and made public after each public meeting; however, a public body does not need to prepare written minutes of an open session if (1) live and archived video or audio streaming of the open session is available or (2) individual public votes on legislation taken by members of the public body are posted promptly on the Internet.

Public Information Act

Maryland's Public Information Act establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated. Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford, Montgomery, Talbot, and Wicomico counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; University System of Maryland; Morgan State University; Department of General Services; 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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