

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 369
Finance

(Senator Dorman)

Firefighters and Emergency Medical Personnel - Procedural Guarantees

This bill provides specified procedural guarantees for paid local fire and emergency services employees who are the subject of any investigation that could lead to disciplinary action, demotion, or dismissal.

Fiscal Summary

State Effect: This bill is not expected to have any significant impact on State operations or finances.

Local Effect: Potential operational impact for the local governments that employ firefighters and emergency services personnel, due to an expected increase in the length of time for handling disciplinary proceedings. This bill may impose a mandate on a unit of local government.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides the following procedural guarantees to fire or emergency personnel who are the subject of investigation, interrogation, or proceedings that may result in disciplinary action:

Judicial Review -- In an appeal to a circuit court for judicial review of a final decision made regarding such disciplinary action, the circuit court:

- may reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision is inconsistent with a criminal adjudication, where the criminal proceeding was pending or adjudicated at the time of the final decision; and
- must admit and consider additional evidence beyond the administrative proceedings record if the court determines that: (1) the employee was not provided a full and adequate opportunity to present evidence at the administrative proceedings; or (2) equity considerations require admission of additional evidence.

Final Decision when Criminal Proceedings are Pending

A final decision generally may not be rendered based on alleged misdemeanor criminal conduct if the final adjudication of the criminal proceeding is pending. However, a final decision may be rendered in this situation if the applicable review board in good faith finds that the conduct: (1) causes substantial impairment to the operation of the employing agency; and (2) poses a substantial risk to the public.

Rights during Investigation

- the employee must be informed of the name, rank, and command of the officer in charge of the investigation;
- the employee must be furnished with a copy of the investigatory file and any exculpatory information, with limited exceptions to protect confidentiality and privileged information. The employee must be furnished with the exculpatory information not less than ten days before any hearing if the employee and the employee's representative agree --
 - to execute a confidentiality agreement with the employer not to disclose any of the material contained in the record for any purpose other than to defend the employee; and
 - to pay any reasonable charge for the cost of reproducing the material involved; and
- upon completion of the investigation, the employee must be notified of the name of any witness and all charges and specifications against the employee not less than ten days prior to any hearing.

Rights during Interrogation

- the employee may not be subjected to interrogation without first receiving written notice of the investigation in sufficient detail to reasonably apprise the employee of the nature of the investigation;

- any interrogation must be conducted at a reasonable hour, preferably at a time when the employee is on duty, unless the seriousness of the investigation is of a degree that an immediate interrogation is required. The interrogation must take place at the facility where the investigating officer is assigned or at the facility with jurisdiction over the place where the incident allegedly occurred;
- the employee must be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation;
- all questions directed to the employee must be asked by and through one interrogator during any one interrogating session;
- interrogating sessions must be for reasonable periods and be timed to allow for any personal necessities and rest periods as are reasonable and necessary;
- the employee may not be threatened with transfer, dismissal, or disciplinary action;
- a complete written or tape-recorded record must be kept of the complete interrogation, including all recess periods. Upon completion of the investigation and request of the employee under investigation, a copy of the record of the interrogation must be made available not less than ten days before a hearing; and
- if the employee under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the employee must be completely informed of his or her rights before the interrogation begins; and
- the employee has the right to be represented by counsel or any representative of the employee's choice who shall be present and available for consultation at all times during the interrogation. The interrogation must be suspended, but not more than ten days, until any such representation is obtained.

Rights Relating to Records

- an employer may not insert any adverse material into any file of the employee unless the employee has had the opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material, unless the employee waives these rights;
- an employee, upon written request, may have any record of a formal complaint made against the employee expunged if: (1) the employer has exonerated the employee of all charges, or determined that the charges were unsubstantiated or unfounded; (2) an administrative hearing board acquits, dismisses, or makes a finding of not guilty; or (3) three years have passed since the findings by the employer or the administrative hearing board.

Application of the Bill's Provisions

The bill specifies that its provisions do not limit a chief's authority to regulate competent and efficient operation and management of the unit or agency by any reasonable means including transfer and reassignment where that action is not punitive in nature and where the chief determines that action to be in the best interests of internal management of the unit or agency.

The bill makes it unlawful to discharge, demote, deny promotion to, transfer, reassign, or otherwise discriminate against any employee because of the employee's exercise of or demand for the above-listed rights or the employee's constitutional rights.

The bill's provisions supercede any local law, ordinance, or regulation that conflicts with the provisions. An employee may waive any or all of the rights provided by these provisions.

Current Law: Paid fire and emergency services personnel who are the subject of disciplinary action proceedings have the right to a judicial review in circuit court of any final decision on disciplinary action. A circuit court's decision may be appealed to the Court of Special Appeals. Fire and emergency services personnel may have other rights guaranteed by local regulations; such rights would vary by locality.

Background: The Law Enforcement Officers' Bill of Rights, enacted in 1974, guarantees specified procedural safeguards to State and local police officers in any investigation that could lead to disciplinary action. This bill would provide comparable rights to fire and emergency services personnel. In fiscal 1997, the latest year for which data is readily available, there were approximately 11,900 paid fire and emergency services personnel statewide.

Local Expenditures: Any additional costs for local governments that employ firefighters and emergency services personnel depends on the extent to which current local regulations are at variance with the procedural guarantees provided by this bill. Montgomery County and Prince George's County advise that the bill's provisions would likely result in lengthier administrative proceedings, causing personnel to be on administrative leave for longer periods. Montgomery County further advises that the preference for interrogations to take place while the person under investigation is on duty will also have an adverse fiscal impact. Montgomery County handles 30 to 40 disciplinary actions per year, exclusive of investigations where the person is exonerated.

Additional Information

Prior Introductions: Similar bills were introduced in the 1998 session as SB 451 and HB 665. SB 451 received an unfavorable report from the Senate Finance Committee. HB 665 received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 1047 (Delegates Zirkin and Giannetti) – Economic Matters.

Information Source(s): Carroll County, Cecil County, City of Salisbury, Harford County, Leonardtown, Montgomery County, Prince George's County, St. Mary's County, Town of Bel Air, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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