

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 880
Appropriations

(Delegate Vallario, *et al.*)

State Government - State Officers or State Employees - Application for Lost Pay
and Attorney's Fees

This bill requires the Board of Public Works (BPW) to compensate a State officer or employee for lost wages and reasonable counsel fees that were incurred in connection with either a criminal investigation in which no charges were filed or a defense against criminal charges if the final disposition of the charges does not result in a finding of guilt or a guilty or no-contest plea. The bill also eliminates the existing requirement that before the applicant is eligible for compensation, the Attorney General must certify that the applicant discharged public responsibilities in good faith, did not engage in unlawful conduct, and was reasonable in retaining counsel and incurring the related fees.

The bill is effective October 1, 2003 and applies retroactively to any claims for lost wages and attorney's fees filed by September 25, 2000.

Fiscal Summary

State Effect: Potentially significant increase in general and special fund expenditures to the extent that lost wages and attorney's fees would have to be paid to claimants under the circumstances specified by the bill. The exact amount cannot be quantified at this time.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: BPW has discretion whether to approve reimbursement of a State officer or employee for reasonable counsel fees that the officer or employee incurred in connection with a criminal investigation into conduct if the investigation has concluded and criminal charges have not been filed or the final disposition of the charges does not result in a finding of guilt, a guilty plea, or a plea of nolo contendere.

BPW may not approve the reimbursement unless:

- the employee or officer applies for it;
- the Attorney General certifies that the applicant retained counsel and promptly gave written notice after counsel was retained;
- the Attorney General determines that in connection with a criminal investigation, the applicant discharged public responsibilities in good faith, did not engage in unlawful conduct; and was reasonable in retaining counsel and incurring the related fees; or
- in connection with criminal charge, the applicant discharged public responsibilities in good faith and was reasonable in retaining counsel and incurring the related fees.

This reimbursement provision does not apply to the Public Service Commission, a board of supervisors of elections of a county; the Baltimore City Board of School Commissioners or a county board of education, or any county officer or unit.

BPW may approve payment of a settlement, judgment, or counsel fees, with or without a hearing, using funds from the General Emergency Fund or money appropriated for that purpose in the State budget or the State Insurance Trust Fund. BPW may delegate the authority to pay such fees to the affected agency if the fees do not exceed \$10,000.

State Expenditures: BPW advises that it currently receives very few claims from State employees for counsel fees in relation to criminal charges. Claims are made more frequently for reimbursement for fees related to noncriminal charges such as personnel harassment. However, in 2001, it received a claim for approximately \$80,000 of attorney's fees, which was denied but would have been paid under this bill.

The Department of Legislative Services (DLS) advises that requiring reimbursement for lost wages could significantly increase the amount that the State must reimburse an employee or officer, particularly if the criminal defense process is lengthy and the employee was highly paid. Based on the current pattern of claims, significant expenditures would likely be associated with an isolated number of cases. However, it is

unknown how many employees will file a claim for reimbursement for wages or fees arising out of criminal charges. Further, the bill's removal of the Attorney General's review and BPW's discretion to decide if a payment is appropriate could increase the number and amount of payments that would otherwise be made.

BPW advises that payments for lost wages could be made from the agency for which the employee works. Reimbursement for attorney's fees could be supported by either the agency or the contingency funds that are currently used.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Office of the Attorney General, Department of Legislative Services

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mdf/jr

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