

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 963
Appropriations

(Delegate McHale)

Firefighters and Emergency Medical Personnel - Procedural Guarantees

This bill establishes procedures to be followed during investigations of firefighters and emergency medical personnel. It covers fire, emergency medical services, paramedics, rescue, or support employees hired and compensated by a county or municipal corporation. It does not cover volunteers.

The bill takes effect on July 1, 2003.

Fiscal Summary

State Effect: None.

Local Effect: Potential increased expenditures in those jurisdictions that have paid firefighters and emergency personnel. **This bill could impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Whenever a covered employee is under investigation, or subjected to an interrogation, by an employer that could lead to disciplinary action, demotion, or dismissal, the following procedures must be followed:

- The interrogation must take place at the facility where the investigating officer is assigned or, at that officer's discretion, at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred.
- The employee must receive written notice in sufficient detail to reasonably apprise the employee of the nature of the investigation.
- The interrogation must be conducted at a reasonable time of day, preferably when the employee is on duty, unless its nature requires immediate action.
- The employee must be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during an interrogation.
- Interrogation sessions must be of reasonable length, and the employee must be permitted reasonable periods of rest and personal necessities.
- The employee may not be subjected to offensive language, or offered any incentive as an inducement to answer any question.
- The employee is entitled, free of charge, to a copy of any recording or transcript made of an interrogation.
- No disciplinary or retaliatory action may be taken or threatened against an employee who asserts any rights under the bill.
- All questions asked at an interrogation session must be asked by a single interrogator.
- If the employee is under arrest, or likely to be placed under arrest as the result of the interrogation, the employee must be completely informed of his or her rights prior to the interrogation.
- The employee may be represented by counsel or a representative of the employee's choice, who must be present and available for consultation at all times during the interrogation. An interrogation shall be suspended not more than ten days until representation is obtained.
- The employee must be given a copy of the investigative file and any exculpatory information, with the exception of: (1) the identity of any confidential sources; (2) any nonexculpatory information; and (3) recommendations as to charges, disposition, or punishment.
- The employee must be given the exculpatory information not less than ten days before any hearing, if the employee agrees to execute a confidentiality agreement not to disclose any of the material for any purpose other than to defend the employee, and to pay any reasonable charge for reproducing the material.
- After the investigation is over, the employee must be given the name of any witnesses and all charges and specifications against the employee not less than ten days prior to any hearing.

- 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 on the adverse material, or the employee waives these rights.
- An employee may have any record of a formal complaint of an employee expunged if: (1) the employer has exonerated the employee, 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.
- An employee may waive any of the preceding rights, but must do so in writing.

The bill does not limit the authority of a chief to regulate competent and efficient operation and management of a unit or agency by any reasonable means, including transfer and reassignment where:

- that action is not punitive in nature; and
- the chief determines it to be in the best interests of the unit or agency.

Nor does the bill prohibit the informal counseling of an employee by a supervisor in reference to a minor infraction of policy or procedure that does not result in disciplinary action.

Current Law: This bill is similar to relevant provisions of the Law Enforcement Officers' Bill of Rights. That law establishes procedures to be followed when law enforcement officers are under investigation.

Background: Florida, Illinois, Virginia, and West Virginia have comparable statutes. Other state and local jurisdictions may have adopted similar rules, or they may be part of a labor-management agreement.

Local Expenditures: All jurisdictions except Baltimore City rely, in whole or in part, on volunteer firefighters who are not covered by the bill. Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Garrett, Harford, Kent, Queen Anne's, St. Mary's, Somerset, and Talbot counties have no paid firefighters. Some local jurisdictions in other counties have all-volunteer fire companies. However, some of these counties and local jurisdictions have paid emergency medical personnel and other employees who are covered by these requirements. For example, while Kent County has no paid firefighters, it advises that the bill would lead to increased expenditures if they have reason to investigate a salaried medical technician.

Washington County anticipates that its only additional costs will result from providing the transcript and information, which costs are expected to be minimal. On the other hand, Montgomery County advises that they handle 60 to 80 disciplinary actions a year, and investigate an equal number where charges are unfounded. They anticipate significant expenditures in adopting the mandatory procedures set out in the bill. Their overtime rate is approximately \$35 per hour.

Additional Information

Prior Introductions: None.

Cross File: SB 689 (Senators Brochin, *et al.*) – Finance.

Information Source(s): State Fire Marshal, City of Havre de Grace, Worcester County, Kent County, Washington County, Montgomery County, Department of State Police, Department of Legislative Services

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