

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 879

(Delegate Vallario, *et al.*)

Judiciary

Judicial Proceedings

**State Government - State Law Enforcement Officers - Application for Lost Pay
 and Attorneys' Fees**

This bill allows the Board of Public Works (BPW) to grant lost wages and attorney's fees to State law enforcement personnel under certain circumstances.

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

Fiscal Summary

State Effect: General fund expenditures could increase by at least \$181,700 in FY 2004 to reimburse one known claimant. Potentially significant increase in general or special fund expenditures to the extent that lost wages and attorney's fees would have to be paid to other claimants under the circumstances specified by the bill. The exact amount cannot be quantified at this time; however, the number of qualifying claimants is expected to be minimal.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	181,700	-	-	-	-
GF/SF Exp.	-	-	-	-	-
Net Effect	(\$181,700)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes BPW to approve payment of lost wages and reasonable attorney's fees resulting from a suspension without pay to an applicant from a State law enforcement agency, less any amount for lost wages due to unrelated administrative suspension or disciplinary action, if: (1) the suspension occurred as a result of one or more criminal charges filed against the applicant; and (2) the final disposition of each charge resulted in a dismissal, *nolle prosequi*, or an acquittal. The bill prohibits BPW from approving payment to a law enforcement applicant if the applicant is terminated from employment as a result of an administrative proceeding resulting from the same criminal charges or the applicant resigns before resuming duties for pay. In these cases only, the bill eliminates the existing requirement that the Attorney General must certify that an applicant for counsel fees: (1) discharged public responsibilities in good faith; (2) did not engage in unlawful conduct; and (3) was reasonable in retaining counsel and incurring the related fees.

Current Law: The chief of police may suspend a law enforcement officer's pay if the officer is charged with a felony. Officers charged with a misdemeanor may be suspended with pay.

Nolle prosequi (also referred to as *nol pros*) is a declaration that the plaintiff in a civil case or the prosecutor in a criminal case will drop prosecution of all or part of a suit or indictment.

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* (no contest).

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; and
- 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, that 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: General fund expenditures could increase by \$181,736 in fiscal 2004 to reimburse an employee of the Department of State Police (DSP) who is seeking lost pay and attorney's fees incurred for defense against a felony criminal charge. The employee was acquitted in 1999. The officer was placed on suspension without pay in December 1998 and later placed on suspension with pay in January 2000. DSP estimates the lost wages with fringe benefits to be \$85,066 and counsel fees to be \$105,000. Part of the fees was incurred during administrative proceedings that followed the conclusion of the criminal investigation.

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. The department assumes that it will bear the cost for both but advises that BPW reimbursed the agency in another case involving back pay for an employee.

BPW advises that it 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. The Department of Legislative Services advises that authorizing reimbursement for lost wages could significantly increase the amount that the State must reimburse a law enforcement officer, particularly if the criminal defense process is lengthy. Based on the current pattern of claims and the narrowly defined circumstances authorized by the bill, however, significant expenditures would likely be associated with an isolated number of cases and would be at BPW's discretion.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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