

HOUSE BILL 1370

E4
HB 879/03 – JUD

8lr2288

By: **Delegates King, Kipke, Schuh, and Walker**
Introduced and read first time: February 8, 2008
Assigned to: Appropriations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2008

CHAPTER _____

1 AN ACT concerning

2 **State Government – Law Enforcement Officers – Application for Lost Pay**
3 **and Attorneys’ Fees**

4 FOR the purpose ~~eliminating a requirement to have the Attorney General or the~~
5 ~~Attorney General’s designee make a determination of the good faith of~~ of
6 altering certain requirements to have certain determinations made concerning a
7 certain applicant for lost pay and attorneys’ fees under certain circumstances;
8 prohibiting the Board of Public Works from approving payment under this Act
9 until certain determinations are reported to the Board of Public Works;
10 authorizing the Board of Public Works to approve payment of lost wages and
11 reasonable attorneys’ fees resulting from a certain suspension without pay to an
12 applicant from a State law enforcement agency under certain circumstances;
13 prohibiting the Board of Public Works from approving certain payments under
14 certain circumstances; providing for the application of this Act; and generally
15 relating to an application to the Board of Public Works by a law enforcement
16 officer for lost back pay or reasonable attorneys’ fees under certain
17 circumstances.

18 BY repealing and reenacting, without amendments,
19 Article – Public Safety
20 Section 3–112(c)
21 Annotated Code of Maryland
22 (2003 Volume and 2007 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 12-314
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2007 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – State Government
6 Section 12-315
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2007 Supplement)

9 BY adding to
10 Article – State Government
11 Section 12-315.1
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2007 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Public Safety**

17 3-112.

18 (c) (1) If a law enforcement officer is charged with a felony, the chief may
19 impose an emergency suspension of police powers without pay.

20 (2) A law enforcement officer who is suspended under paragraph (1) of
21 this subsection is entitled to a prompt hearing.

22 **Article – State Government**

23 12-314.

24 Subject to the limitations in this Part III of this subtitle, the Board of Public
25 Works may approve reimbursement of a State officer or State employee or otherwise
26 pay for reasonable counsel fees that the officer or employee incurred:

27 (1) in connection with a criminal investigation into conduct as an
28 officer or employee if the investigation has concluded and criminal charges have not
29 been filed against the officer or employee; or

30 (2) in defending against criminal charges that related to conduct as an
31 officer or employee if final disposition of all of the charges does not result in a plea of
32 nolo contendere, a guilty plea, or a finding of guilt.

33 12-315.

1 (a) The Board of Public Works may not provide reimbursement or payment
2 under this Part III of this subtitle unless:

3 (1) the State officer or State employee submits to the Board a written
4 application for reimbursement; and

5 (2) **EXCEPT AS PROVIDED IN § 12-315.1 OF THIS SUBTITLE**, the
6 Attorney General certifies that:

7 (i) the applicant retained counsel;

8 (ii) the applicant gave the Attorney General written notice
9 promptly after counsel was retained; and

10 (iii) **EXCEPT AS PROVIDED IN § 12-315.1 OF THIS SUBTITLE**,
11 after review of the evidence and other information, the Attorney General or a designee
12 appointed under this section made the following determinations:

13 1. in connection with the matter under criminal
14 investigation, the applicant discharged the public responsibilities in good faith, did not
15 engage in unlawful conduct, and was reasonable in retaining counsel and incurring
16 the counsel fees for which reimbursement is sought; or

17 2. in connection with the matter that was the subject of
18 criminal charges, the applicant discharged the public responsibilities in good faith and
19 incurred reasonable counsel fees.

20 (b) Notwithstanding subsection (a)(2)(ii) of this section, the Board of Public
21 Works may approve reimbursement to an applicant who fails to give the Attorney
22 General notice promptly after counsel is retained if the Board determines that the
23 failure is for good cause.

24 (c) If the Attorney General believes that it would be inappropriate for the
25 Attorney General to make the determinations under subsection (a)(2)(iii) of this
26 section, the Attorney General or the Board of Public Works may designate other
27 counsel to carry out that duty.

28 (d) The determinations of the Attorney General or designee under this
29 section are not subject to judicial review.

30 **12-315.1.**

31 (A) **SUBJECT TO THE LIMITATIONS OF ~~SUBSECTION (B)~~ SUBSECTIONS**
32 **(B) AND (C) OF THIS SECTION, THE BOARD OF PUBLIC WORKS MAY APPROVE**
33 **PAYMENT OF LOST WAGES AND REASONABLE ATTORNEYS' FEES RESULTING**
34 **FROM A SUSPENSION WITHOUT PAY TO AN APPLICANT FROM A STATE LAW**
35 **ENFORCEMENT AGENCY UNDER THIS SUBTITLE, LESS ANY AMOUNT FOR LOST**

1 WAGES RESULTING FROM AN UNRELATED ADMINISTRATIVE SUSPENSION OR
2 DISCIPLINARY ACTION, IF:

3 (1) THE SUSPENSION WITHOUT PAY OCCURRED AS A RESULT OF
4 ONE OR MORE CRIMINAL CHARGES AGAINST THE APPLICANT; AND

5 (2) THE FINAL DISPOSITION OF EACH CRIMINAL CHARGE AGAINST
6 THE APPLICANT RESULTED IN A DISMISSAL, NOLLE PROSEQUI, OR AN
7 ACQUITTAL.

8 (B) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE PAYMENT
9 UNDER THIS SECTION IF:

10 (1) THE APPLICANT IS TERMINATED FROM EMPLOYMENT WITH
11 THE STATE LAW ENFORCEMENT AGENCY AS A RESULT OF AN ADMINISTRATIVE
12 PROCEEDING RESULTING FROM THE SAME CRIMINAL CHARGES; OR

13 (2) THE APPLICANT RESIGNS FROM THE APPLICANT'S POSITION
14 WITH THE STATE LAW ENFORCEMENT AGENCY BEFORE RESUMING DUTIES FOR
15 PAY.

16 (C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE PAYMENT
17 UNDER THIS SECTION UNTIL THE DETERMINATIONS REQUIRED UNDER
18 PARAGRAPHS (2) AND (3) OF THIS SUBSECTION ARE REPORTED TO THE BOARD
19 OF PUBLIC WORKS.

20 (2) THE ATTORNEY GENERAL SHALL DETERMINE AND REPORT
21 TO THE BOARD OF PUBLIC WORKS AS TO WHETHER THE APPLICANT:

22 (I) RETAINED COUNSEL; AND

23 (II) GAVE THE ATTORNEY GENERAL WRITTEN NOTICE
24 PROMPTLY AFTER COUNSEL WAS RETAINED.

25 (3) AFTER REVIEW OF THE EVIDENCE AND OTHER INFORMATION,
26 THE ATTORNEY GENERAL OR A DESIGNEE APPOINTED UNDER § 12-315 OF THIS
27 SUBTITLE SHALL DETERMINE AND REPORT TO THE BOARD OF PUBLIC WORKS
28 AS TO WHETHER THE APPLICANT:

29 (I) IN CONNECTION WITH THE MATTER UNDER CRIMINAL
30 INVESTIGATION, DISCHARGED THE PUBLIC RESPONSIBILITIES IN GOOD FAITH,
31 DID NOT ENGAGE IN UNLAWFUL CONDUCT, AND WAS REASONABLE IN
32 RETAINING COUNSEL AND INCURRING THE COUNSEL FEES FOR WHICH
33 REIMBURSEMENT WAS SOUGHT; OR

1 **(II) IN CONNECTION WITH THE MATTER THAT WAS THE**
2 **SUBJECT OF CRIMINAL CHARGES, DISCHARGED THE PUBLIC RESPONSIBILITIES**
3 **IN GOOD FAITH AND INCURRED REASONABLE COUNSEL FEES.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
5 construed to apply retroactively and shall be applied to and interpreted to affect any
6 application for payment for lost wages or attorneys' fees described in this Act filed on
7 or after September 25, 2000.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.