

Department of Legislative Services  
 Maryland General Assembly  
 2008 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 1370

(Delegate King, *et al.*)

Appropriations

Judicial Proceedings

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

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

The bill applies retroactively to any claims for lost wages and attorney’s fees filed on or after September 25, 2000.

Fiscal Summary

**State Effect:** General or special fund expenditures could increase by at least \$105,000 in FY 2009 to reimburse one known claimant. Additional general and special fund expenditures could result if additional claimants qualify for reimbursement under the bill; however, the number of qualifying claimants is expected to be minimal. No effect on revenues.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF/SF Exp.	105,000	-	-	-	-
Net Effect	(\$105,000)	\$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 fees to a State law enforcement agency employee suspended without pay who applies for such payment or reimbursement, less any amount for lost wages due to unrelated administrative suspension or disciplinary action. The suspension without pay must have occurred as a result of one or more criminal charges filed against the applicant, all resulting in a dismissal, *nolle prosequi*, or acquittal.

Before BPW may approve payment, the Attorney General must determine that the applicant promptly notified the Attorney General once counsel was retained. For a matter under criminal investigation, the Attorney General must determine that the applicant discharged public responsibilities in good faith, did not engage in unlawful conduct, and was reasonable in incurring counsel fees. If criminal charges were filed, the Attorney General must determine that the applicant discharged public responsibilities in good faith and incurred reasonable counsel fees.

The bill prohibits BPW from approving payment if the applicant resigns before resuming duties for pay or is terminated as a result of an administrative proceeding resulting from the same criminal charges.

**Current Law:** BPW is authorized to reimburse a State officer or employee for reasonable counsel fees (1) in connection with a criminal investigation into conduct, if the investigation has concluded and criminal charges have not been filed; or (2) in defending against criminal charges related to conduct if the final disposition of the charges does not result in a *nolo contendere* plea, a guilty plea, or a finding of guilt.

An application for reimbursement may be approved by BPW if the applicant retained counsel and promptly notified the Attorney General once counsel was retained. The Attorney General must first determine that an applicant discharged public responsibilities in good faith and was reasonable in incurring counsel fees. If the applicant was not charged, the Attorney General must further determine that the applicant did not engage in unlawful conduct and was reasonable in retaining counsel.

BPW may approve payment of a settlement, judgment, or counsel fees with or without a hearing. Payment may be made from money appropriated in the State budget, money in the State Insurance Trust Fund, or the General Emergency Fund. BPW may require a unit of State government to reimburse the individual with funds from the unit's budget if the amount does not exceed \$10,000.

**State Expenditures:** General or special fund expenditures could increase by at least \$105,000 in fiscal 2009 to reimburse a Department of State Police officer acquitted of a felony criminal charge in 1999. The officer had been placed on suspension without pay in December 1998 and was suspended with pay beginning in January 2000. BPW approved a maximum tentative allotment of \$85,066 in April 2003 to compensate the officer for lost wages and benefits; this amount was subsequently reduced by \$20,295 at an April 2004 meeting of the board.

DSP has estimated the officer's counsel fees at \$105,000 for criminal and administrative proceedings. Payment for counsel fees could be expended from money appropriated in the State budget, money in the State Insurance Trust Fund, or the General Emergency Fund.

The total number of additional claims that would result from this bill is unknown. Given the narrowly defined circumstances of the bill, the number is expected to be minimal, particularly since the reimbursement would be at BPW's discretion. However, each additional claim could result in significant additional expenditures, depending on the circumstances of the case.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 879 of 2003, passed both chambers but was vetoed by the Governor.

**Cross File:** None.

**Information Source(s):** Board of Public Works, Department of State Police, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2008  
mll/ljm Revised - Correction - March 17, 2008  
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