

Department of Legislative Services  
2010 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1297

(Delegates Valderrama and Vallario)

Judiciary

Judicial Proceedings

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**Criminal Procedure - Criminal Injuries Compensation Board - Delegation of  
Contested Claims to Office of Administrative Hearings**

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This bill creates a procedure for delegation of criminal injuries compensation cases to the Office of Administrative Hearings (OAH) for a final determination when a claimant contests the findings of fact or conclusions of law of the Criminal Injuries Compensation Board (CICB).

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**Fiscal Summary**

**State Effect:** Minimal. The bill's provisions can be generally accommodated with the existing budgeted resources of OAH and CICB. However, if all or most contested claims on the basis allowed under the bill result in OAH hearings, the bill may impose some operational difficulties for the board. Criminal Injuries Compensation Fund special fund reimbursements to OAH may increase by as much as \$29,000 per year for the additional hearings.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** Under the bill, if a claimant contests the findings of fact or conclusions of law in a final decision of the Secretary of Public Safety and Correctional Services affirming, modifying, or reversing a final decision of CICB, within 30 days the claimant may request a *de novo* decision by OAH. Within five days, the Secretary must delegate the case to OAH for a *de novo* determination of final findings of fact and conclusions of law regarding all matters related to the claim contested by the claimant. OAH must

promptly schedule the matter for proceedings and hold a hearing in the county where the crime or delinquent act occurred, the claimant resides, or the claimant is regularly employed, at the election of the claimant. The claimant and any attorney of record for the claimant must be provided with copies of the board's report, the Secretary's decision, and OAH's decision.

A member of CICB is not entitled to compensation or reimbursement to attend a contested hearing before OAH. The board must adopt specified regulations relating to OAH, including regulations for the approval of attorneys' fees. The bill's provisions apply to all claims not final after September 30, 2010.

**Current Law:** The State's CICB in the Department of Public Safety and Correctional Services provides financial assistance for innocent victims of crime. The board may compensate victims who suffer physical or psychological injury for their medical expenses and loss of earnings. In cases of homicide, the board may assist with funeral expenses and loss of support on the part of the victim's dependents. A claimant seeking compensation from the Criminal Injuries Compensation Fund must file a claim no later than three years after the occurrence of the crime or delinquent act or the death of the victim. In a case of child abuse, a claimant may file a claim up to three years after the claimant knew or should have known of the abuse. A person who commits the crime or delinquent act that is the basis of a claim, or an accomplice of the person, is not eligible to receive an award.

Within 30 days after the receipt of a claim, CICB must notify the claimant if additional material is required. With certain exceptions, within 90 days after the receipt of a claim and all necessary supporting material, CICB must (1) complete the review and evaluation of each claim; and (2) file a written report with the Secretary setting forth the decision and the reasons in support of the decision. Within 30 days after the receipt of a written report from the board, the Secretary must modify, affirm, or reverse the decision of the board. Within 30 days after the final decision of the Secretary, a claimant aggrieved by that decision may appeal the decision under the Administrative Procedure Act.

### *Administrative Hearings*

Although judicial power is vested only in the courts, quasi-judicial hearings are conducted by a multitude of Executive Branch commissions, departments, and agencies. Some departments and individual agencies conduct their own hearings, but many delegate their authority to OAH, an independent unit of the Executive Branch. The office has approximately 60 administrative law judges, headed by the Chief Administrative Law Judge.

OAH is reimbursed by other State agencies that refer cases to it. The Department of Budget and Management allocates funds to these agencies to cover anticipated costs associated with such hearings by utilizing a caseload formula. Agencies' annual assessments are determined based on their prior year's caseload and the length of time it takes to hear cases. The cost per case varies because the length of time required to hear a particular type of case varies considerably according to the complexity of the case.

Over 50% of the OAH total annual case-hour allocation is to the Maryland Department of Transportation and the Department of Human Resources. Of the various types of hearings held, personnel grievances, with an average case time of approximately seven hours, are the most common type of cases heard by the office. OAH anticipates hearing about 30,000 cases per year for a total of over 44,000 case hours.

Although the form of the hearings varies, a common characteristic is that, after a determination at the administrative level, a party may file an appeal for the purpose of judicial review by a circuit court.

COMAR provisions allow \$50 per day for attorney fees for office time, \$60 per day for hearings, and an overall fee cap of 10% of the amount eventually awarded to a claimant for personal use (not including medical allowances).

**Background:** In fiscal 2009, there were 823 claims filed with CICB and the fund paid out approximately \$6.5 million in awards. Assuming 800 claims are filed in fiscal 2010, awards for the current fiscal year will total about \$6.5 million. The proposed fiscal 2011 State budget includes \$6.5 million for awards.

CICF revenues average approximately \$3.6 million annually and are used to support crime victim compensation as well as CICB operating expenses. A fund balance in excess of \$2.5 million existed in the account since fiscal 2002. As a result of a number of operational improvements between fiscal 2002 and 2004, such as a new automated tracking system, increased staffing, and a more aggressive outreach effort, CICB increased the number of awards made to victims of crime and the amount of State funding used to support this purpose. CICB used the available fund balance to help support this growth. As a result, the special fund appropriation for CICB has exceeded annual revenues since fiscal 2005. As of fiscal 2009, the CICF fund balance has been exhausted. CICB estimates that by fiscal 2013 and each subsequent year, total funding for crime victim compensation will be reduced to \$4.4 million, as opposed to the more than \$6.0 million provided annually for the past two years.

**State Fiscal Effect:** The board advises that about 10 to 15 claims decisions of the board are contested per month. On average, all but about four of these cases are resolved without a hearing. Under this bill, it is unclear whether the board would still have the

authority (or an available timeframe in which) to continue to resolve contested issues without a hearing. In any case, the bill may generate an additional 6 to 11 administrative hearings per month for OAH, at various locations in the State.

CICB estimates that the cost for OAH to conduct these hearings total about \$225 per case, resulting in a potential annual expenditure increase of \$29,000. Because the reimbursement from CICB special fund expenditures to OAH will be made the following fiscal year, based on actual hearings from the prior year, these reimbursements will begin to occur in fiscal 2012.

OAH advises that an increase in caseload from this bill can be handled with existing budgeted resources. Although this bill may impose some additional fiscal and operational difficulties on the existing special fund resources of CICB, if updated regulations governing these provisions allow for continued attempts by the board to resolve contested issues prior to a hearing, this bill should not impose a burden on either OAH or the board that could not be handled with existing budgeted resources. Such additional special fund payments would not be expected to significantly affect the solvency of the fund.

Whether additional hearings by OAH for contested claims under the bill result in additional awards (including the award of additional attorneys' fees) cannot be reliably predicted.

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### **Additional Information**

**Prior Introductions:** HB 1278 of 2009 and HB 1329 of 2008 passed the House, were referred to the Senate Judicial Proceedings Committee, and had no further action taken. The cross files, SB 619 of 2009 and SB 524 of 2008, received unfavorable reports from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Office of Administrative Hearings, Department of Public Safety and Correctional Services (Criminal Injuries Compensation Board), Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2010  
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