

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 38 (Delegate Smigiel)
 Judiciary

Public Safety - Handgun Permits - Applicant Qualifications

This bill alters a current law finding that must be made by the Secretary of State Police for the issuance of a State handgun permit that the applicant has a good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger. The bill also requires that the issuance of such a permit requires that the applicant has demonstrated competence with a handgun by presenting evidence of any of 10 specified criteria, including participation in an organized shooting competition approved by the Department of State Police (DSP).

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: General fund revenues increase by \$7.5 million in FY 2014 from the issuance of additional handgun permits and the payment of associated fees. General fund expenditures for DSP increase by \$5.2 million in FY 2014 to process additional handgun permit applications. Future years reflect annualization, inflation, automobile replacement in FY 2017, and the licensure issuance and renewal cycle. Future years also reflect a decrease in new permit applications and renewals over time. It is assumed that State finances are not affected in FY 2013, despite the bill's June 1, 2013 effective date.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	\$7,500,000	\$6,375,000	\$9,918,800	\$8,656,000	\$6,525,100
GF Expenditure	\$5,229,000	\$5,104,100	\$5,508,300	\$6,079,200	\$5,875,200
Net Effect	\$2,271,000	\$1,270,900	\$4,410,400	\$2,576,800	\$649,900

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

Local Effect: None.

Small Business Effect: Meaningful. It is assumed that the bill leads to an increase in the number of handguns sold in the State. Thus, retailers of handguns and ammunition benefit. Small businesses that provide firearm safety training may benefit from an increase in the demand for their services.

Analysis

Bill Summary: The 10 new specified criteria for demonstrating competence with a handgun, pursuant to the issuance of a State permit, are evidence that the applicant:

- has participated in an organized shooting competition approved by DSP;
- has current membership in or an honorable discharge from the U.S. Armed Forces or the National Guard;
- holds current employment with or retirement from a local, State, or federal law enforcement agency;
- has completed a hunter safety course recognized by any state;
- has completed a firearms safety training course approved by the Police Training Commission or a similar agency of another state;
- has completed a firearms safety training course approved by a nationally recognized training organization;
- has completed a firearms safety training course offered by a law enforcement agency, higher education institution, or public or private institution that uses instructors certified by the National Rifle Association to teach the course;
- possesses a valid out-of-state permit to carry a concealed handgun for which the applicant had to complete a firearms safety training course;
- possesses (or formerly possessed) a current Maryland handgun permit, unless it was revoked; or
- possesses a State qualified handgun instructor certification issued by DSP.

Current Law: To be issued a permit to carry a handgun by DSP, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or a misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability that may reasonably render possession of a handgun a danger to the

applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding by DSP that the permit is necessary as a reasonable precaution against apprehended danger.

A handgun permit application costs \$75; two years after the initial permit and every three years thereafter, a \$50 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks for initial applications (\$52) and renewals (\$24).

Although Maryland law requires a person to be issued a permit to wear, carry, or transport a handgun, whether concealed or not, there are several exceptions to that requirement. For example, two of the exceptions include authorizing a person to wear, carry, or transport a handgun, provided that the handgun is unloaded and in an enclosed case or enclosed holster when being transported, if the person is (1) transporting the handgun to or from a legal place of sale or a repair shop or between the person’s home or business or (2) wearing, carrying, or transporting the handgun in connection with an organized military activity, target practice, sport shooting event, hunting, or trapping. Further, a person may wear, carry, or transport a handgun if the person is in the person’s home, place of business, or other property that the person owns or is a supervisory employee who is wearing, carrying, or transporting the handgun under specified circumstances.

Among other requirements that apply to an applicant to purchase, rent, or receive a regulated firearm, the individual must have completed a certified firearms safety training course that the Police Training Commission conducts without charge or that meets the standards of the Police Training Commission. An individual is not required to complete a certified firearms training course if such a training course has already been completed or if the individual:

- has already completed a certified firearms safety training course;
- is a law enforcement officer of the State or any local law enforcement agency in the State;
- is a member, retired member, or honorably discharged member of the U.S. Armed Forces or the National Guard;
- is a member of an organization that is required by federal law governing its specific business or activity to maintain handguns and applicable ammunition; or
- holds a permit to carry a handgun.

Background:

Good and Substantial Reason

In *Woollard v. Gallagher* (No. 12-1437), the U.S. Court of Appeals for the Fourth Circuit is considering the constitutionality of Maryland's "good and substantial reason" handgun permit requirement.

On Christmas Eve 2002, Raymond Woollard's son-in-law, Kris Lee Abbott, broke into Mr. Woollard's home. During the incident, Mr. Woollard grabbed his shotgun and aimed it at Mr. Abbott, who was under the influence of drugs and attempting to steal a set of car keys. Subsequent to a struggle in which Mr. Abbott took the shotgun from Mr. Woollard, Mr. Woollard's son retrieved a different gun and pointed it toward Mr. Abbott while Mrs. Woollard called the police. Two and a half hours later, the police responded to Mr. Woollard's home, which was located in a remote part of Baltimore County.

In 2003, Mr. Woollard applied for and was issued a permit to carry a handgun for personal protection. Mr. Woollard renewed his permit in 2006, shortly after Mr. Abbott was released from prison. When Mr. Woollard sought to renew his permit again in 2009, however, the Handgun Permit Unit of MSP denied his renewal application because Mr. Woollard could not produce any current evidence of "apprehended fear." Mr. Woollard first appealed the decision informally and then appealed formally to the Handgun Permit Review Board. Ultimately, the board concluded that Mr. Woollard did not produce any evidence of threats occurring outside of his home and thus did not have a "good and substantial reason" to wear, carry, or transport a handgun.

On July 29, 2010, Mr. Woollard filed a civil action in the U.S. District Court for the District of Maryland against the Secretary of State Police and three members of the Handgun Permit Review Board in their official capacity. The complaint alleged that Maryland's handgun permitting law violates the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. After both sides presented oral arguments and filed motions for summary judgment, on March 2, 2012, the court issued an opinion that Maryland's "good and substantial reason" requirement infringes on an individual's right to bear arms under the Second Amendment. In the court's analysis, the "good and substantial reason" requirement was not sufficiently tailored to Maryland's interest in public safety and crime prevention and, therefore, violates the Second Amendment. The court, however, rejected Mr. Woollard's Equal Protection claim, finding that the Second Amendment provided the proper framework for analysis. After the District Court issued its opinion, the defendants filed an appeal in the U.S. Court of Appeals for the Fourth Circuit seeking to overturn the finding that Maryland's handgun permitting law violates the Second Amendment. On August 2, 2012, the Fourth Circuit granted Maryland's motion for a stay pending the

outcome of the appeal. As a result, Maryland may continue its current handgun permitting practices while the appeal is pending. Oral arguments for the appeal were heard on October 24, 2012.

Handgun Permits and Concealed Carry Permits in Other States

There are about 14,000 active handgun permits in Maryland. Since 2009, DSP has received an average of about 1,800 initial and 2,100 renewal nonpolice-related applications per year, including renewal applications from retired law enforcement personnel. It generally takes DSP less than two days to receive the results of a national criminal history records check from the Federal Bureau of Investigation and approximately 135 days to process, investigate, and issue a permit. DSP has denied an average of 214 nonpolice-related applications each year between 2008 and 2010, or 5.6% of applications, on the basis of a finding that the person did not have a “good and substantial reason” for the permit.

Nationally, states’ laws and requirements governing carry and concealed carry permits vary. According to a July 2012 report by the U.S. Government Accountability Office (<http://www.gao.gov/assets/600/592552.pdf>):

The number of states allowing concealed carry permits is increasing, and states broadly differ in eligibility requirements and the extent to which they have reciprocity agreements. In June 2002, 7 states and the District of Columbia prohibited the concealed carry of handguns. As of March 2012, individuals can carry concealed handguns in all but 1 state (Illinois) and the District of Columbia. “Shall-issue” states – in which issuing authorities are required to issue a permit to an applicant that fulfills the objective statutory criteria – generally issue more permits than states with greater discretion in granting permits (“may-issue” states). Because of differing eligibility requirements, some states would issue a permit to an applicant, while others would not. For example, some states define what constitutes a disqualifying felony differently or have different firearms training requirements. As of March 2012, 39 states that issue permits and Vermont (permits not required) recognize concealed carry permits from other states. Of the 9 states that do not grant reciprocity, 8 are may-issue states.

Until 2011, Wisconsin did not issue carry permits. On November 1, 2011, Wisconsin became a shall-issue state and 65,921 permit applications were received in the first two months. For calendar 2012, the first full year of operation, Wisconsin received an additional 98,867 applications. By population, Maryland and Wisconsin are similar.

State Revenues: The Department of Legislative Services (DLS) estimates that this bill increases new handgun permit applications by about 100,000 in fiscal 2014, and thus

imposes an operational burden on DSP to issue additional handgun permits. The bill specifies five additional qualifiers for the issuance of a permit. According to DSP, it takes about 135 days to process, investigate, and issue a permit.

Accordingly, assuming an increase of about 100,000 permit applications per year beginning in fiscal 2014, general fund revenues from handgun permit fees increase by an estimated \$7.5 million in fiscal 2014. By fiscal 2018, the increase in general fund revenues decreases to \$3.9 million; this estimate assumes that, over time, initial handgun permit applications decline by 15% per year, and that 10% of permit holders choose not to renew annually. **Exhibit 1** shows the estimated increase in general fund revenues from additional handgun permit fees through fiscal 2018.

Exhibit 1
Estimated Handgun Permit Fee Revenue under the Bill

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
New Apps.	100,000	85,000	72,250	61,413	52,201
Fee Revenue	\$7,500,000	\$6,375,000	\$5,418,750	\$4,605,975	\$3,915,075
Renewals	-	-	90,000	81,000	72,900
Fee Revenue	-	-	4,500,000	\$4,050,000	\$2,610,050
Total Revenue	\$7,500,000	\$6,375,000	\$9,918,750	\$8,655,975	\$6,525,125

Source: Department of Legislative Services

State Expenditures: General fund expenditures for DSP increase by an estimated \$5.2 million in fiscal 2014, which reflects a 120-day start-up delay. This estimate reflects the cost to hire 14 full-time troopers, 24 office services clerks, and 44 contractual background check investigators to process and issue the additional handgun permit applications, review and issue renewal permits, and prepare information relating to hearings. It includes salaries and fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions (Permanent)	38
Positions (Contractual)	44
Salaries and Fringe Benefits (Permanent)	\$2,101,399
Salaries and Fringe Benefits (Contractual)	1,368,652
Motor Vehicle Purchases and Operations	973,182
Additional Police and Civilian Equipment	511,756
Other Operating Expenses	<u>273,979</u>
Total FY 2014 DSP Expenditures	\$5,228,968

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and automobile replacement costs in fiscal 2017.

DLS assumes that the bill's new qualifiers for a handgun permit could reasonably be handled expeditiously by DSP through currently available sources. The onus of presenting evidence of demonstrated competence with a handgun is with the applicant.

The Police Training Commission advises that completion of a certified firearms safety training course is already required for a person to purchase a handgun. However, in circumstances where the handgun permit applicant is not the purchaser of the weapon – such as when the purchaser is an employer of the applicant and the handgun is necessary for the job – the permit applicant may not have completed such a course. The commission assumes that most handgun permit applicants will have already completed a sufficient training course, so that the commission can handle any increase in training that results from the bill with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police, Department of Public Safety and Correctional Services, U.S. Government Accountability Office, Department of Legislative Services

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