

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 741

(Senator Madaleno, *et al.*)

Judicial Proceedings

Judiciary

Public Safety – Handgun Permit Review Board – Appeals

This bill alters the process by which a person who is denied a permit to wear, carry, or transport a handgun, or a renewal of such a permit, or whose permit is revoked or issued with restrictions by the Secretary of State Police, may appeal the decision to the Office of Administrative Hearings (OAH). By December 1, each year, the Handgun Permit Review Board within the Department of Public Safety and Correctional Services (DPSCS) must report to the Governor and the General Assembly on specified items relating to such appeals. The bill also makes the board subject to the Open Meetings Act.

Fiscal Summary

State Effect: General fund expenditures increase by \$85,800 in FY 2019. Future years reflect annualization and ongoing expenses. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	85,800	102,500	105,300	109,100	113,000
Net Effect	(\$85,800)	(\$102,500)	(\$105,300)	(\$109,100)	(\$113,000)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Within 90 days after receiving a request to review the decision of the Secretary of State Police by a person who is denied a permit to wear, carry, or transport a handgun, or a renewal of such a permit, or whose permit is revoked or issued with restrictions by the Secretary, the Handgun Permit Review Board must (1) review the record developed by the Secretary *and* (2) conduct a hearing. Within 60 days after the last hearing in the matter, the board must submit, in writing, the reasons for the board's decision to the applicant, the permit holder, and the Secretary. Within 30 days after the issuance of the board's written reasons for its decision in the matter, the applicant, the permit holder, or the Secretary may appeal the board's decision for review by OAH. Within 60 days after the receipt of such a request from the applicant, permit holder, or the Secretary, OAH must schedule and conduct a *de novo* hearing on the appeal, at which witness testimony and other evidence may be provided. Within 90 days after the conclusion of the last hearing on the matter, OAH must issue a finding of facts and a decision. A party aggrieved by the decision of OAH may appeal the decision to the circuit court.

By December 1 of each year, the board must report to the Governor and the General Assembly:

- the number of appeals of decisions by the Secretary that have been filed with the board within the previous year;
- the number of decisions by the Secretary that have been sustained, modified, or reversed by the board within the previous year;
- the number of appeals that are pending; and
- the number of appeals that have been withdrawn within the previous year.

Current Law:

Appeal Process

Informal Review by Secretary of State Police: A person who is denied a permit to carry, wear, or transport a handgun, or a renewal of such a permit, or whose permit is revoked or issued with restrictions by the Secretary, may request the Secretary to conduct an informal review by filing a written request within 10 days after receipt of written notice of the Secretary's initial action. The Secretary must conduct the informal review and may conduct a personal interview with the person requesting the review. The Secretary must sustain, reverse, or modify the action under informal review and provide written notification within 30 days after receipt of the request for informal review. A person is not required to file a request for an informal review before requesting review by the board.

Review by Handgun Permit Review Board: A person whose application for a handgun permit or a renewal of a permit has been rejected, or whose permit has been revoked or limited by the Secretary, may request the board to review the decision of the Secretary by filing a written request within 10 days after receipt of written notice of the Secretary's action. In addition, a person whose application for a permit or renewal of a permit is not acted on by the Secretary within 90 days after submission may request a hearing before the board by filing a written request with the board.

Within 90 days after receiving a request for a review of the Secretary's action, the board must review the record developed by the Secretary *or* conduct a hearing. The board may receive and consider additional evidence submitted by a party in conducting a review of the decision of the Secretary. Based on the board's consideration of the record and any additional evidence, the board must sustain, reverse, or modify the Secretary's decision. The decision of the board is not final until a written signed decision is sent to the applicant or holder of the permit; however, if the board is unable to reach a decision by majority vote, the decision of the Secretary stands.

Handgun Permit Review Board

The Handgun Review Board is a State government entity within DPSCS. It was created by Chapter 13 of 1972. The board consists of five members appointed by the Governor from the general public, with advice and consent of the Senate. The Governor designates the chairman. Members serve three-year terms and are eligible for reappointment. Board members are entitled to compensation in accordance with the State budget for each day that they are engaged in the discharge of their duties as well as reimbursement for expenses.

The board must meet at a location accessible to the public and with sufficient frequency to ensure that a request for review and notification of the decision of the board occurs within 120 days of receipt of the request for review by the board. A majority of the board must designate the location, time, and date of meetings.

Open Meetings Act

Under Maryland's Open Meetings Act, with limited exceptions, a "public body" must (1) provide reasonable advance notice of the time and location of meetings, including whether any portion of the meeting will be in closed session and (2) meet in open session in a location that is reasonably accessible to attendees. Among other things, the Open Meetings Act also establishes requirements for public bodies relating to training and the preparation of agendas and minutes.

A "public body" is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a

memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of “public body” include juries, the Governor’s cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

State Expenditures: General fund expenditures for DPSCS increase by \$85,826 in fiscal 2019, which accounts for the bill’s October 1, 2018 effective date. This estimate reflects the cost of hiring one administrative specialist and one office secretary to assist with processing the work of the Handgun Permit Review Board in order to meet the deadlines required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses (including rent).

Positions	2
Salaries and Fringe Benefits	\$72,408
Operating Expenses	<u>13,418</u>
Total FY 2019 DPSCS Expenditures	\$85,826

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

In calendar 2017, DPSCS reports that 213 cases handled by the board were appealed to OAH, representing 60% of the total 356 cases handled by the board. Assuming that the number of appeals remains consistent, OAH should be able to implement the bill with existing budgeted resources. However, to the extent that the number of appeals to OAH increases under the bill or OAH is not able to meet the 90-day timeframe required under the bill for the issuance of a finding of facts and a decision, general fund expenditures may increase for OAH to hire additional staff.

Additional Information

Prior Introductions: None.

Cross File: HB 819 (Delegate Atterbeary, *et al.*) - Judiciary.

Information Source(s): Department of Public Safety and Correctional Services; Department of State Police; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510