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Letter of Information
For Presentation to the Judiciary Committee
February 26, 2020

House Bill 985: Compensation to Individual Erroneously Convicted, Sentenced, and Confined or Whose Conviction or Adjudication Is Reversed

The Board of Public Works staff has reviewed the legislation and appreciates the opportunity to provide information on three areas of the legislation, as introduced:

- **60 Day Payment Requirement**

The legislation includes the following language at p. 6, lines 13-16 of House Bill 985

The Board of Public Works shall pay the compensation determined under subsection (d) of this section within 60 days after receiving an order issued under subsection (b) of this section in a lump sum or installments.

The plain reading of this language indicates that the legislative intent is for full payment of an OAH ordered amount within 60 days of the Board receiving an OAH payment order. The language further indicates the Board may make as many separate payments as determined appropriate by the Board over the course of the 60 day payment period. There are two points of information that may be helpful in the Committee's review of this language. Firstly, the Board's budget would require a standing fund balance sufficient to make any such payments ordered within 60 days. For reference, in 2019, the Board approved grant allocations under SFP § 10-501 to five individuals totaling \$9,308,896 to be paid over the course of a mix of five fiscal years (two individuals) and seven fiscal years (three individuals). Currently, the FY 2021 budget contains a total of \$500,000 the Board may use for SFP §10-501 grant payments. Secondly, in altering the current discretionary authority exercised by the Board under SFP §10-501 to a mandatory requirement for payment approval, the legislation creates a requirement unique in Maryland law where the Governor, Treasurer and Comptroller are required to cast an affirmative vote on a matter before the Board.

Page 2- Board of Public Works letter of information on House Bill 985

- **Retroactive Modifications**

The legislation includes the following language in Section 3 at p. 8, lines 7-10 of House Bill 985

And be it further enacted, that Section 1 of this Act shall be construed to apply retroactively to allow a person to apply for modification of any compensation awarded by the Board of Public Works between January 1, 1987 and June 30, 2020, inclusive.

As the five individuals granted funds in 2019 by the Board under SFP § 10-501 received funding in-line with the Maryland median household income-based formula included in the legislation, this language likely applies only to the four individuals who received grant awards between 1987 and 2004. The question left open by the legislation is how to apply the Maryland-median household income-based formula in these four cases. Specifically, should the Maryland median household income immediately preceding the original grant award be used to calculate a modification amount, or should the income figure immediately preceding the modification be used. If all four eligible individuals apply for modifications, the resolution of this ambiguity alters the dollar amounts of the modifications by millions of dollars.

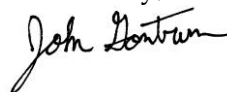
- **Matters Covered under newly created § 10-502**

The legislation includes the following language at p. 7, lines 12-21 of House Bill 985

(b) If a court reverses finally the conviction or adjudication of an individual and orders that fines, governmental fees, costs, or restitution that were paid by the individual in connection with the conviction or adjudication be refunded, the Board of Public Works shall compensate the individual for the amount determined by the court to be owed to the individual for fines, fees, costs, and restitution previously paid by the individual. (c) The Board of Public Works shall pay to the individual the amount set by the court under subsection (b) of this section within 60 days after receiving the order from the individual.

There are two points of information that may be helpful in the Committee's review of this language. Firstly, the term 'adjudication' is not defined in the legislation and is used in the Courts & Judicial Proceedings Article to apply to a broad range of proceedings, including civil cases. Secondly, this language carries the attendant issues previously identified with necessitating a fund balance in the Board's budget sufficient to pay any amount ordered within 60 days and removing the traditional discretion exercised by the Governor, Treasurer and Comptroller in reviewing matters before the Board.

I hope you find this information helpful as you consider these policy changes. As always, the Board will administer the laws as the legislature intends and will be a resource for your Committee, as needed.

Sincerely,


John Gontrum