

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 348

(Senator Kelley, *et al.*)

Judicial Proceedings

**State Compensation for Erroneous Conviction and Imprisonment -
Gubernatorial Pardon Requirement - Repeal**

This bill repeals a requirement that an erroneously convicted individual must receive a gubernatorial pardon to be eligible for specified payments by the Board of Public Works (BPW).

Fiscal Summary

State Effect: Potential significant increase in cumulative general fund expenditures for BPW if the bill significantly increases payments by BPW. State revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: BPW may grant payments to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. BPW is authorized to grant an amount commensurate with the actual damages sustained by the individual, but is also authorized to grant a reasonable amount for any financial or other appropriate counseling for the individual due to the confinement. An individual is eligible for these payments *only if* the individual has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error.

BPW must make payments from money in the General Emergency Fund or money that the Governor provides in the annual budget. BPW may only make payments to the pardoned individual, and the payments can be made in a lump sum or installments.

An individual is prohibited from paying any part of a received payment to another person for services rendered in connection with the collection of the payment. An obligation incurred in violation of this prohibition is void and a payment made in violation of this prohibition must be forfeited to the State. However, an individual may contract for services to determine the individual's innocence, obtain a pardon, or obtain the individual's release from confinement.

State Expenditures: General fund expenditures increase, perhaps significantly, if the bill significantly increases payments by BPW. The extent to which this occurs cannot be reliably determined at this time.

Pardons are granted at the discretion of the Governor. Being erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit is not a prerequisite for a gubernatorial pardon. Data is not immediately available on the number of individuals erroneously convicted, sentenced, and confined under State law for a crime not committed and who were not granted gubernatorial pardons.

The National Registry of Exonerations is a project of the University of California Irvine Newkirk Center for Science and Society, the University of Michigan Law School, and the Michigan State University College of Law. The registry, which is based on publicly available information, collects, analyzes, and compiles information about known exonerations of innocent criminal defendants since 1989. The registry lists information for 40 exonerations in Maryland. Information is not readily available on how many of the individuals listed were not granted gubernatorial pardons.

However, to the extent that the bill results in payments to individuals who do not qualify under existing statute, then the bill may significantly increase general fund expenditures. While the population of individuals affected by the bill is likely small, the impact of the bill depends on the cumulative value of BPW payments made as a result of the bill. BPW advises that the most recent payment made under the statutory provisions affected by the bill was \$1.4 million in 2004. According to BPW, individuals who have been pardoned and are receiving compensation receive BPW payments over a 10-year period.

Based on the language of the bill, it appears that BPW still retains discretion to authorize payments for individuals erroneously convicted, sentenced, and confined under State law. BPW advises that it does not currently have any criteria for evaluating these claims for payment and refers interested individuals to the Governor's Office since they have to obtain

a gubernatorial pardon in order to qualify for payments. BPW can develop such criteria with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 593 (Delegate Dumais) - Judiciary.

Information Source(s): Governor's Office; Judiciary (Administrative Office of the Courts); Board of Public Works; National Registry of Exonerations; Department of Legislative Services

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