

SENATE BILL 868

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By: **Senators Benson, Currie, and Gladden**

Introduced and read first time: January 31, 2014

Assigned to: Finance and Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Public Safety Diversity Act of 2014

FOR the purpose of requiring the Department of State Police, when it advertises for or recruits new employees, to include advertising that is targeted toward racial minority communities; requiring rule governing promotion of a Department employee that requires the promotion decision to be made by a board to require the board to be racially and gender diverse; requiring a certain disciplinary hearing board to be racially and gender diverse under certain circumstances; requiring the fair practices officer of the Department to meet certain qualifications; and generally relating to diversity in public safety.

BY repealing and reenacting, without amendments,
Article – Public Safety
Section 2–402
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY adding to
Article – Public Safety
Section 2–402.1
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 2–404 and 3–107
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 5–207
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

2–402.

(a) (1) In accordance with the State budget, the Secretary shall appoint the employees that the Secretary considers necessary for the efficient administration of the Department.

(2) The Secretary shall make each appointment from a list of eligible candidates in accordance with the State Personnel and Pensions Article.

(b) Each appointee to the Department shall:

(1) be a resident of the State on the date of appointment; and

(2) have the character, education, and other qualifications established by the Secretary under this title.

2–402.1.

WHEN THE DEPARTMENT ADVERTISES FOR OR RECRUITS NEW EMPLOYEES, THE DEPARTMENT SHALL INCLUDE ADVERTISING THAT IS TARGETED TOWARD RACIAL MINORITY COMMUNITIES, INCLUDING ADVERTISING IN NEWSPAPERS OR ON RADIO STATIONS WHOSE PRIMARY AUDIENCE IS A RACIAL MINORITY POPULATION.

2–404.

(a) In this section, “obsolete rank” means a rank designated by the Secretary to which no further promotions will be made.

(b) The Secretary shall make all promotions.

(c) (1) **(I)** Promotion to a rank, except deputy secretary, shall be made in the manner required by rule.

(II) A RULE GOVERNING PROMOTION THAT REQUIRES THE PROMOTION DECISION TO BE MADE BY A BOARD SHALL REQUIRE THE BOARD TO INCLUDE RACIAL AND GENDER DIVERSITY.

(2) For a noncommissioned rank that has fewer than 25 police employees, the Secretary by rule may direct that it is unnecessary to fill the noncommissioned rank for purposes of promotion.

(3) (i) This paragraph does not apply to a rank that requires technical knowledge.

(ii) Except as provided in subsection (d) of this section, a police employee may not be appointed or promoted to a rank unless the police employee:

1. is bypassing an obsolete rank and currently fills the rank immediately below the obsolete rank; or

2. has filled the rank immediately below the rank to which the police employee is to be promoted.

(d) (1) Notwithstanding any other provision of law, the Secretary may appoint without examination:

(i) a police employee who holds a commissioned rank to the rank of Major; and

(ii) a police employee who holds a commissioned rank of not less than Captain to the rank of Lieutenant Colonel.

(2) A police employee appointed in accordance with this subsection continues to serve at the pleasure of the Secretary.

(3) Notwithstanding any other provision of law, on termination of an appointment under this subsection, the police employee may:

(i) return to the rank held before the appointment; or

(ii) be promoted to a higher rank to which the police employee became eligible for promotion during the appointment.

(e) An incumbent police employee in an obsolete rank remains in that rank until promoted, demoted, retired, or terminated.

(f) Promotions of civilian employees shall be made in accordance with the State Personnel and Pensions Article.

3-107.

(a) (1) Except as provided in paragraph (2) of this subsection and § 3-111 of this subtitle, if the investigation or interrogation of a law enforcement officer results

in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.

(2) A law enforcement officer who has been convicted of a felony is not entitled to a hearing under this section.

(b) (1) The law enforcement agency shall give notice to the law enforcement officer of the right to a hearing by a hearing board under this section.

(2) The notice required under this subsection shall state the time and place of the hearing and the issues involved.

(c) (1) Except as provided in paragraph (4) of this subsection and in § 3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three members who:

(i) are appointed by the chief and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency; and

(ii) have had no part in the investigation or interrogation of the law enforcement officer.

(2) At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint is filed.

(3) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State shall function as the law enforcement officer of the same rank on the hearing board.

(ii) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iii) If the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iv) If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor, or that official's designee, shall function as the chief for purposes of this subtitle.

(4) (i) A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.

(ii) A law enforcement officer may elect the alternative method of forming a hearing board if:

1. the law enforcement officer works in a law enforcement agency described in subparagraph (i) of this paragraph; and

2. the law enforcement officer is included in the collective bargaining unit.

(iii) The law enforcement agency shall notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.

(iv) If the law enforcement officer elects the alternative method, that method shall be used to form the hearing board.

(v) An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board.

(vi) If the law enforcement officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

(vii) If authorized by local law, this paragraph is subject to binding arbitration.

(5) IF THE LAW ENFORCEMENT OFFICER AGAINST WHOM THE COMPLAINT IS FILED IS A MEMBER OF THE DEPARTMENT OF STATE POLICE, THE HEARING BOARD APPOINTED UNDER THIS SUBSECTION SHALL BE RACIALLY AND GENDER DIVERSE.

(d) (1) In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.

(2) The subpoenas may be served without cost in accordance with the Maryland Rules that relate to service of process issued by a court.

(3) Each party may request the chief or hearing board to issue a subpoena or order under this subtitle.

(4) In case of disobedience or refusal to obey a subpoena served under this subsection, the chief or hearing board may apply without cost to the circuit court of a county where the subpoenaed party resides or conducts business, for an order to compel the attendance and testimony of the witness or the production of the books, papers, records, and documents.

(5) On a finding that the attendance and testimony of the witness or the production of the books, papers, records, and documents is relevant or necessary:

(i) the court may issue without cost an order that requires the attendance and testimony of witnesses or the production of books, papers, records, and documents; and

(ii) failure to obey the order may be punished by the court as contempt.

(e) (1) The hearing shall be conducted by a hearing board.

(2) The hearing board shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved.

(3) The law enforcement agency and law enforcement officer may be represented by counsel.

(4) Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.

(f) (1) Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.

(2) The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) Each record or document that a party desires to use shall be offered and made a part of the record.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(g) (1) The hearing board may take notice of:

(i) judicially cognizable facts; and

(ii) general, technical, or scientific facts within its specialized knowledge.

(2) The hearing board shall:

(i) notify each party of the facts so noticed either before or during the hearing, or by reference in preliminary reports or otherwise; and

(ii) give each party an opportunity and reasonable time to contest the facts so noticed.

(3) The hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(h) (1) With respect to the subject of a hearing conducted under this subtitle, the chief shall administer oaths or affirmations and examine individuals under oath.

(2) In connection with a disciplinary hearing, the chief or a hearing board may administer oaths.

(i) (1) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

(2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the attendance of witnesses and their testimony shall be itemized and paid by the law enforcement agency.

(j) An official record, including testimony and exhibits, shall be kept of the hearing.

Article – State Personnel and Pensions

5–207.

(a) (1) The head of each principal unit shall appoint:

(i) a fair practices officer who:

1. **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION**, reports directly to the head of the unit; and

2. is an assistant secretary or an employee of the unit with stature similar to that of an assistant secretary; and

(ii) an appropriate number of equal employment opportunity officers for the unit.

(2) If necessary, the fair practices officer of a unit may also be the unit's equal employment opportunity officer.

(3) **THE FAIR PRACTICES OFFICER OF THE DEPARTMENT OF STATE POLICE:**

(I) **SHALL BE A TRAINED DIVERSITY PROFESSIONAL;**

(II) **SHALL REPORT DIRECTLY TO THE GOVERNOR AND THE JOINT COMMITTEE ON FAIR PRACTICES; AND**

(III) **MAY NOT BE A SWORN LAW ENFORCEMENT OFFICER.**

(4) All appointments under this subsection shall be made in accordance with position descriptions approved by the Secretary.

(b) The Department shall provide training, assistance, and advice for equal employment opportunity officers and fair practices officers.

(c) Each fair practices officer shall:

(1) implement the Program within the unit;

(2) investigate and, as appropriate, resolve complaints filed under § 5-211 of this subtitle; and

(3) coordinate activities of equal employment opportunity officers in the unit.

(d) An equal employment opportunity officer shall:

(1) monitor all personnel actions adopted by the unit;

(2) attest that procedures consistent with this article, the Governor's Code on Fair Practices, and other State and federal equal employment opportunity laws were followed by the unit in taking a personnel action; and

(3) perform the duties assigned by the fair practices officer and any other duty required by this article.

(e) An appointing authority shall delay the effective date of any adverse personnel action that directly affects an equal employment opportunity officer for up to 45 days, pending review and resolution by the Coordinator.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.