

Attachment C

Office of Law

Linda M. Schuett, County Attorney

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County Executive Janet S. Owens

Anne Arundel County Office of Law
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April 27, 2006

VIA FACSIMILE: 410-268-1775

David Bliden, Executive Director
Maryland Association of Counties
169 Conduit Street
Annapolis, Maryland 21401

Re: Senate Bill 420

Dear Mr. Bliden:

I am writing in response to your request for information regarding the effects of SB 420 on collective bargaining in Anne Arundel County. You asked (1) whether Anne Arundel County law deals with binding arbitration for law enforcement officers, and (2) if SB 420 is enacted into law, would the provisions of Anne Arundel County law dealing with binding arbitration for law enforcement officers be automatically implemented, or require passage of an implementing ordinance. Finally, you asked whether the County can "opt out" of binding arbitration.

If SB 420 becomes law, the amendments to the LEOBR enacted by SB 420 will be subject to binding arbitration, and no implementing ordinance would be required. The Anne Arundel County Charter mandates binding arbitration for law enforcement officers. The County Council could not enact an ordinance that "opted out" of binding arbitration of the provisions of the LEOBR that would be subject to binding arbitration under SB 420.

Sincerely,

A handwritten signature in cursive script that reads "Linda M. Schuett".

Linda M. Schuett
County Attorney

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ADMINISTRATIVE ASSISTANT
J. J. MOORE
STAFF INVESTIGATOR

March 28, 1994

Via Facsimile (410) 268-1775

Mark D. Woodard
Maryland Association of Counties, Inc.
169 Conduit Street
Annapolis, Maryland 21401

Re: SB 73/ HB 1604

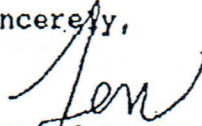
Dear Mark:

On behalf of the Maryland State Lodge of the Fraternal Order of Police, thanks so much to you and David Blden for your help in working out a compromise on the Law Enforcement Officers' Bill of Rights Final Order legislation.

Should this bill be enacted, as we hope it will be, we do not see the need for any future legislation on this subject, so long as the police chiefs live up to the new language in the law.

Based on this experience, the FOP is looking forward to future cooperative ventures to serve our mutual interests.

Sincerely,



Leonard L. Lucchi
Legislative Counsel
Maryland State Fraternal
Order of Police

Review of Police Disciplinary Procedures
in Maryland and Other States

IGS

THE INSTITUTE FOR
GOVERNMENTAL SERVICE

statutes are silent as to whether the hearing board's decision is binding, often because the hearing process itself has been left to the discretion of local jurisdictions. In general, an aggrieved officer is entitled to appeal the decision of a hearing board or higher administrative authority to the court system.

Maryland Law Compared to Other States

Maryland law contains many provisions that are more favorable to officers than provisions in other states. However, the Maryland law has two drawbacks from the officers' perspective. The chief selects all members of the hearing board (unless a collective bargaining agreement provides otherwise). Plus, the hearing board's punishment recommendation is not binding on the chief, unless a collective bargaining agreement provides otherwise. Despite these drawbacks, the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island.

Actual Practice in Maryland

The survey of disciplinary practices in Maryland police agencies solicited detailed information on how police agencies have implemented the provisions of Maryland's LEOBR statute. One hundred and six police agencies, including all of the large police agencies, responded. Ten agencies reported having collective bargaining agreements which address disciplinary procedures. Two of these agreements contain provisions for an alternate method of forming hearing boards. Other agreements provide officers with peremptory challenges of hearing board members.

In addition to the provisions of collective bargaining agreements, agencies have implemented internal policies that enhance the neutrality of hearing boards. Two common mechanisms are random selection of hearing board members and obtaining hearing board members from other police agencies.

The vast majority of disciplinary cases in Maryland police agencies are resolved without a hearing. For the three-year period from January 1995 to early December 1997, responding agencies reported over 10,000 complaints against police officers that required investigation. One-third of all complaints were sustained by internal investigations.

Based on data from 96 agencies, more than 80 percent of the time the officer accepted the discipline that was recommended by the internal investigators. The remaining cases were resolved through a variety of means, including the officer negotiating a lesser punishment, the officer resigning or retiring and the convening of a hearing board.

A total of 381 hearings occurred in the responding agencies during the period. More than half of Maryland police agencies did not convene any hearing boards during 1995, 1996 or 1997. Forty-two agencies conducted at least one hearing during the period; four agencies (Baltimore City, Baltimore County, Maryland State, and Prince George's County) convened 202 hearing boards, or more than half of the total of 381 hearing boards reported.

For the cases reported for the 1995 to 1997 period, about three-quarters of the hearing board decisions were findings of guilt. Suspension was most frequently the most severe penalty recommended by the hearing board.

As discussed above, under Maryland law, the hearing board's decision regarding guilt is



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BILL NO.: Senate Bill 420

TITLE: Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration

POSITION: **OPPOSE**

DATE: February 22, 2006

COMMITTEE: Senate Judicial Proceedings

CONTACT: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** Senate Bill 420 because its passage could unwisely restrict a chief law enforcement officer's disciplinary discretion. Current law recognizes that the accountability of a chief is an important and desired public policy. SB 420 would erode that recognition.

The Law Enforcement Officers' Bill of Rights (LEOBR) (Title 3, Subtitle 1 of the Public Safety Article) establishes police officer discipline procedures. Generally, before a police officer can be disciplined there must be an adversarial hearing before a tribunal known as a hearing board. The chief appoints the hearing board, which consists of at least 3 officers who meet certain criteria. Typically, union agreements limit the chief's appointment discretion.

After conducting a hearing, the board makes a binding determination regarding guilt or innocence. If the board finds an officer innocent, the case proceeds no further. If there is a guilty finding, the board submits a discipline recommendation to the chief. Subject to certain narrow exceptions, the discipline recommendation is advisory. But if the chief wishes to impose sanctions greater than those recommended by the board, the law requires that the chief must, among other things, grant the officer an opportunity to be heard and state the evidence upon which the chief relies to increase the recommended discipline.

While SB 420 merely authorizes a county to subject the negotiation of an alternative hearing board or the finality of the hearing

board's decision to binding arbitration, the bill essentially compromises the existing administrative structure that places accountability with the chief.

Citizens demand that law enforcement officers be held accountable. Police chiefs and sheriffs, whether elected or appointed, ultimately answer to the citizens of their jurisdiction. But if this bill were enacted, counties would likely be subjected to significant pressure to authorize the use of arbitrators whose appointment would likely be restricted by union agreements, who are not accountable, and whose decisions would be final.



In addition, the proposed binding arbitration authorization creates the prospect of inconsistent departmental discipline. Different arbitrators could render different punishment decisions for similar incidents. With the arbitrators' decision being binding, the Police Chief or Sheriff loses the discretion necessary to ensure that discipline for similar incidents is consistent or that desired public policy is implemented.

A 1999 University of Maryland Institute for Governmental Service (IGS) study of Maryland police disciplinary procedures documented the great protections enjoyed by Maryland's law enforcement officers. In comparing Maryland's law with other states' laws the study concluded that "...the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island." *Review of Police Discipline Procedure in Maryland and Other States*; June 1999 at page v. This conclusion was reached even after acknowledging the provisions about which the unions most often complain, concerning the chief's discretion to appoint the hearing board and increase the discipline recommendation.

In conclusion, the counties believe, and State law recognizes, that accountability should rest solely with the chief and should not be subject to decisions from an unaccountable third party. The existing LEOBR prohibitions on binding arbitration make sense and preserve that belief. Accordingly, MACo urges that SB 420 be given an **UNFAVORABLE** report.



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COLE B. WESTON
LODGE PRESIDENT

DAVID J. FOLDERAUER
LODGE SECRETARY

February 22, 2006

The Honorable Brian E. Frosh, Chairman
Senate Judicial Proceedings Committee
The Senate of Maryland
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401-1991

Re: Senate Bill 420 – Law Enforcement Officer’s Bill of Rights – Hearing
Boards – Binding Arbitration

Dear Chairman Frosh:

On behalf of the Baltimore County Fraternal Order of Police, Lodge # 4, I would like to express support for SB 420. This bill contains no mandate. It simply allows local jurisdictions to apply existing law with regard to collective bargaining and binding arbitration. Local jurisdictions that do not provide for collective bargaining and binding arbitration are not affected. Nothing in the bill requires a local jurisdiction to provide for collective bargaining or binding arbitration. Lastly, this bill applies equally to all parties who participate in the collective bargaining process.

Please consider a favorable report on SB 420.

Sincerely,

Cole B Weston
President, Baltimore County
Fraternal Order of Police, Lodge # 4

cc: Members, Senate Judicial Proceedings Committee





State of Maryland
Department of State Police
Government Affairs Division
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: February 22 , 2006

BILL NUMBER: Senate Bill 420 **POSITION:** Oppose

BILL TITLE: Law Enforcement Officers' Bill of Rights -
Hearing Boards - Binding Arbitration

REVIEW AND ANALYSIS:

This legislation would allow binding arbitration in the selection and formation of a hearing board, and binding arbitration in the introduction of evidence, the officer's record and prior convictions during the sentencing phase if it was authorized by local law. This would allow local jurisdictions to essentially change the rules which standardize and regulate the hearing board process for law enforcement officers and agencies.

Under current law, when an officer has a right to a hearing board for allegations of misconduct, there is an established process for the selection and formation of the members of the hearing board. The current law requires a three member hearing board, of which one member must be the same rank as the accused officer. Current law also allows for an alternative method of selecting the members of a hearing board. This alternative method may be used under certain circumstances and allows a law enforcement agency that has recognized and certified an exclusive collective bargaining representative to negotiate with the law enforcement agency regarding using an alternative method of forming the board. The current statute regarding the Law Enforcement Officers' Bill of Rights (LEOBR) allows for consistent application and interpretation by all law enforcement agencies throughout the State.

Senate Bill 420 would allow the removal of statewide consistency and fairness in the hearing board process which has been in place since 1974. Under this Bill, local laws and arbitration could take precedence over LEOBR and a different method of selecting, forming and conducting hearing boards could be used in every jurisdiction. Law enforcement agencies such as the