

Exhibit D
Senate Bill 420
2006



Maryland Association of
COUNTIES, Inc.

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April 28, 2006

The Honorable Robert L. Ehrlich, Jr.
Governor
State of Maryland
State House
100 State Circle
Annapolis, MD 21401

Re: Veto Request - SB 420- Law Enforcement Officers' Bill of Rights- Hearing Boards -
Binding Arbitration

Dear Governor Ehrlich:

The Maryland Association of Counties (MACo) respectfully requests that you veto Senate Bill 420. The bill upsets the fair and longstanding balance established by the Law Enforcement Officers' Bill of Rights (LEOBR) between the rights of a law enforcement officer (officer) and the rights of the head of a law enforcement agency (chief) during officer disciplinary proceedings. Its implementation would ultimately erode the authority and accountability of chiefs for officer discipline, denying citizen recourse and citizen confidence in the credibility of law enforcement.

The LEOBR presently requires that claims of officer misconduct be considered by a three person hearing board (board), which is appointed by the chief, with certain qualifications, e.g. appointees must include an officer of the same rank as the charged officer. *Public Safety Article* § 3-107(c)(2). The decision of the hearing board is final as to guilt or innocence, but the chief may, with limited exceptions and qualifications, alter the discipline recommendation of the board. For instance, if the chief chooses to increase the discipline recommendation, the chief must grant the officer an opportunity to be heard and state the evidence upon which the chief relies to increase the recommended discipline. *Id.* at 3-108(d)(5)

The board's composition and whether the board's decision as to discipline is final can be collectively bargained. *Id.* at § 3-107(c)(4)(i) and § 3-108(c)(1)(ii). But, existing law specifically prohibits a dispute during contract negotiations regarding these two critical components of police discipline from being submitted to binding arbitration. *Id.* at § 3-107(4)(vii) and § 4-108(c)(3). This prohibition recognizes the need to ensure the chief and the elected officials who appoint the chief can be held directly accountable for an officer's actions. Citizens expect this accountability as their interest in officer conduct is well recognized, with specific incidents periodically raising great public concern and media attention.

SB 420 rejects this prohibition on binding arbitration of officer discipline related issues. The bill requires that where local law authorizes binding arbitration, binding arbitration must be used when there is a dispute during the collective bargaining process about proposed contract provisions regarding the composition of the hearing board and whether the board's disciplinary recommendation is final. In practice, there will always be binding arbitration since the union will demand finality for the board decision and the chief will reject that demand. Hence, SB 420 would delegate the resolution of this dispute to an arbitrator who has no accountability to citizens.

It is certain that at some point in time an arbitrator will accede to the union demand for board decision finality. This eventuality will occur sooner in those jurisdictions where existing statute requires the arbitrator to consider both the union and management demands as a package, having to accept one or the other in its entirety. In those circumstances, the demand for board finality would be included with unrelated wage and condition of employment demands, with which the arbitrator might agree. But, to accept those demands, the arbitrator would also be acceding to the board finality demand.

This manner of negotiation is now statutorily mandated in the four counties with charter provisions authorizing binding arbitration for officer collective bargaining impasses – Anne Arundel, Baltimore, Montgomery, and Prince George's Counties. See Anne Arundel County Code, § 6-4-111(j)(4); Baltimore County Code, § 4-5-505(f)(1); Montgomery County Code, § 33-81(b)(6); and Prince George's County Code, § 13A-111.01. Since the bill's reference to "local law" authorization by definition includes a charter provision, in those four counties SB 420's binding arbitration provisions will apply to collective bargaining after the bill's October 1, 2006 effective date without any further action by those counties.

History establishes the likely success of future efforts to secure similar binding arbitration provisions in the charters of the other charter counties. SB 420's enactment would certainly fuel these efforts. Hence, the bill's enactment could lead to the chiefs who supervise the vast majority of officers in Maryland not having discipline authority over those officers. Even now, SB 420's enactment would mean the chiefs' discipline authority over approximately 5,962 officers, or 56% of all county officers, would be subject to immediate dilution.

Chiefs do not regularly reject the discipline recommendations of boards, applying their discretion judiciously. But, there are circumstances when the penalty recommendation must be rejected. For instance, chiefs have opted to terminate officers, when boards have recommended lesser penalties, when officers have used excessive force, unjustifiably used force, communicated racial slurs, committed perjury, submitted false documents, engaged in substance abuse, or used their officer positions inappropriately for personal gain. See Attachment A.

These circumstances document the compelling public policy considerations requiring a chief to retain discipline discretion. Ensuring public confidence in the credibility of law enforcement is a most critical government responsibility. Limitations on a chief's ability to dismiss officers who have lied, used excessive force, or shown racial insensitivity will erode this public confidence. As noted in the attached 1997 *Baltimore Sun* editorial, the "fox guarding the hen house" situation SB 420 furthers would certainly undermine public confidence in government's ability to control police conduct. *See* Attachment B.

Another critical reason for preserving the chief's authority to alter the board's recommendation is to ensure consistent discipline practices. Hearing boards are individually appointed for each incident and do not typically contain the same members. In fact, the required hearing board appointment of an officer of the same rank as the officer before the board ensures appointment variances when multiple officers are charged for the same incident. *Id.* at §3-107(c)(2).

Variances in board composition always make it possible that similar incidents will give rise to different punishment recommendations. The discipline discretion limitation SB 420 proposes would prohibit rectifying these inconsistencies. This prohibition would not only institutionalize a poor management practice but would also pose potential equal protection violations.

SB 420 has a long history, with the General Assembly rejecting provisions seeking to substantively undermine a chief's existing discipline discretion in at least seven bills during the past 14 years. *See* HB 1004 (1992), HB 110 (1993), HB 22 and SB 73 (1994), HB 1296 (1996), HB 1206 (1996), HB 1296 (2000), and HB 1164 (2005). The bills are so familiar that they are typically individually referred to as the "final order bill." No compelling evidence of chief misuse of authority has ever been presented to justify passage of a final order bill.

In written testimony submitted for SB 420, the FOP President erroneously suggests that where binding arbitration is now required the county could enact an ordinance to opt out from SB 420's mandated binding arbitration provisions. FOP representatives emphasized this purported opt out option in oral testimony. As indicated in the attached letters from the Prince George's and Anne Arundel Counties Offices of Law, the suggested opt out is not an option in the four counties where binding arbitration is required by county charter. *See* Attachment C.

The FOP testimony disingenuously understates the bill's implications, stating that it "...is a procedural bill to modernize the LEOBR by simply making it consistent with existing local binding arbitration statutes." This is not the case. The bill is a circuitous and effective mechanism to secure the final order bill that has been consistently rejected. The egregious consequences that would arise from its enactment are certainly clear.

The Honorable Robert L. Ehrlich, Jr.
April 28, 2006
Page 4

In 1994, you co-sponsored HB 1604, which proposed an enhanced process for an officer when a chief was contemplating increasing the penalty recommended by the board. That same year SB 73 and HB 22 proposed an absolute limit on a chief's ability to increase the board's recommended penalty, i.e. a final order bill. Negotiations between local governments and the Maryland State Lodge of the Fraternal Order of Police (FOP) resulted in the enactment of HB 1604. See Chapter 695, Laws of Maryland.

In acknowledging the compromise, the FOP counsel stated in a 1994 letter that "...should this bill be enacted...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." See Attachment D. Subsequent to the 1994 compromise, no evidence has been presented in any bill hearing that the chiefs have not been adhering to their statutory obligations when increasing a board penalty recommendation. So, FOP advocacy for SB 420 should be rejected as inconsistent with the 1994 compromise.

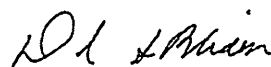
An extensive 1999 University of Maryland Institute for Government Service (IGS) study of Maryland officer disciplinary procedures documents the great protections enjoyed by Maryland's officers. In comparing Maryland's law with other states' laws the study concludes that "...the Maryland law appears to 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 is reached even after acknowledging the LEOBR provisions SB 420 affects, concerning the chief's discretion to appoint the hearing board and increase the discipline recommendation. See Attachment E.

MACo recognizes that Maryland's law enforcement officers are dedicated and diligent public servants who are periodically required to risk their lives to protect Maryland citizens. SB 420 is not relevant to these fine officers, but only to the few aberrant officers who need to be appropriately disciplined. Making it more difficult to effectively discipline these aberrant officers certainly demeans the credibility of the decent officers who may be forced to continue to serve with them.

In conclusion, to preserve public confidence in law enforcement MACo joins police chiefs and sheriffs in urging you to veto SB 420. The long-term implications of enacting this bill provide compelling justification for this action.

Thank you for your consideration.

Respectfully yours,



David S. Bliden
Executive Director

Attachments

cc: The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
The Honorable Brian Frosh
Mr. Kenneth H. Masters
Mr. Alan R. Friedman
Mr. Joseph Getty
Mr. Donald Hogan
Mr. Timothy Perry
Ms. Kristin Jones

**Examples of Chief's or Sheriff's Decision Terminating Officer
After Hearing Board Recommended a Less Severe Penalty**

USE OF FORCE

Baltimore City
September 14, 2000

Charge: Excessive Force-Off duty Officer hit citizen over the head with a broomstick when he did not acknowledge the officer's request to move his car.

Board's Recommendation: Thirty days suspension without pay and training on civil rights stop and frisk and assault standards

Baltimore City
April 1 - 3, 2003

Charge: While in uniform and out of officer's assigned district, officer initiated contact with and assaulted the neighbor of the officer's ex-girlfriend.

Board's Recommendation: Counseling and Seventy Days Suspension Without Pay

RACIAL MISCONDUCT

Baltimore City
December 9, 2005

Charge: Referred to two commanders as "white niggers", while off-duty but in the presence of other officers

Board's Recommendation: Severe Letter of Reprimand, Five Days Loss of Leave (Officer retired in lieu of being terminated)

Howard County
November 8, 1990

Charge: Improper conduct and harassment, including publicly presenting Nazi-type salutes

Board's Recommendation: Reduction in rank and suspension

FALSE STATEMENTS/PERJURY/LYING

Baltimore County
January 2006

Charge: Nine instances of submitting false forms with forged supervisor's signature

Board's Recommendation: 30 days suspension without pay.

Baltimore City
October 9, 2002

Charge: Failure to Obey an Order by Commanding Officer - False Statement

Board's Recommendation: Fifty Days Suspension Without Pay

Baltimore City
February 27, 2003

Charge: Perjury when presenting testimony for the State during domestic violence case

Board's Recommendation: Middle Letter of Reprimand, Two Days Loss of Leave

Garrett County
April 2001

Charge: Four instances of submitting false meal receipts for reimbursement

Board's Recommendation: 90-day suspension and reduction in rank

CRIMINAL CONDUCT

Prince George's County
May 2, 2003

Charge: Use of an illegal/banned drug while on duty.

Board's Recommendation: Demotion of two ranks

Montgomery County
May 2002

Charge: Driving under the influence, running a red light, causing a motor vehicle accident, with personal injury, and leaving the scene of the accident.

Board's Recommendation:: 160 hours of suspension (4 weeks' pay).

St. Mary's County
May 2004

Charge: Unauthorized release of valuable building materials seized from a criminal investigation to a family member of the officer.

Board's Recommendation: Reduction in rank and a 30-day suspension.

 March 21, 1997

THE SUN

EDITORIALS

Handcuffing police chiefs

■ *Fox guarding henhouse?: House bill ignores public stake in misconduct reviews.*

SUPPORTERS OF House Bill 1172, which would reduce Maryland's police chiefs' power to clean up allegations of police misconduct, contend their proposal is about fairness to officers. But they can't make a case about fairness to the public, whom the police officers serve.

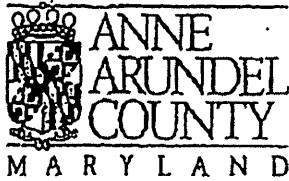
This is a bill written by unions, supported by the Fraternal Order of Police, the United Food and Commercial Workers Union and other labor groups. It would dismantle the current checks and balances in police discipline review. Currently, when an officer is charged with misconduct, the chief must convene a hearing board of three members. One must be the same rank as the officer being investigated. The board's decision on guilt or innocence is binding, but its recommended penalty can be adjusted by the chief.

Under the bill the hearing board's penalty would be binding, or perhaps subject it to binding arbitration. Opponents of the legislation, including the Maryland Chiefs of Police Associ-

ation and the Sheriffs Association, the Maryland Association of Counties and the Maryland Municipal League, contend that even if police brutality had been videotaped — such as in the Rodney King case — a chief would be powerless to fire those involved if a hearing board decreed a lesser penalty, or none at all.

The public, by and large, trusts its police, and should. But several cases of misconduct last year — from police scalping tickets at Camden Yards to sexual crimes — should give legislators pause. Also, a study of racial disparity in discipline within the Baltimore City police department concluded that while black officers typically serve on boards that review cases involving black officers, white officers often lead these boards. If these boards are made all-powerful, city or county councils might as well not bother calling police chiefs on the carpet to explain apparent injustices. The same goes for the legislature. This bill would affect jurisdictions whose police have collective bargaining, including the Maryland State Police, Baltimore City, most large counties and some towns.

Police officers, indeed, have an enormous stake in how internal discipline is meted out. But H.B. 1172 ignores the public's stake.



Office of Law

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County Executive Janet S. Owens

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P.O. Box 6675
Annapolis, Maryland 21401
410-222-7888

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
STATE REPRESENTATIVE

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 Bliden 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

Attachment E

Review of Police Disciplinary Procedures
in Maryland and Other States

I*G*S

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



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.

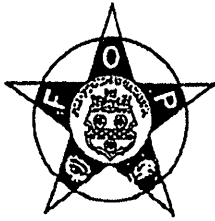
Citizens demand that law enforcement officers be held accountable. Police chiefs and sheriffs, whether elected or appointed, ultimately answer to the citizens of their jurisdiction. But if this bill were enacted, counties would likely be subjected to significant pressure to authorize the use of arbitrators 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

REPRESENTING THE PROFESSIONAL POLICE OFFICERS OF BALTIMORE COUNTY





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

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

POSITION ON PROPOSED LEGISLATION

Department of State Police are frequently requested to conduct hearing boards for local agencies. This legislation would require these agencies to try to learn and apply new procedures for the conduct of hearing boards in every jurisdiction that enacts enabling legislation and the standardized rules of LEOBR would not apply.

Additionally, allowing binding arbitration at the local level would establish the opportunity for a wide range of procedures and interpretations on conducting these boards. The application of local negotiations and rules, absent some form of legal or consistent standard of conduct would cause these rules and subsequent procedures to become arbitrary and would go from one extreme to the other depending upon the jurisdictional area and type of representation. These local decisions and potentially wide ranging interpretations could form the basis for appeals. The decisions in these appeals would, in fact, affect every law enforcement agency in the State, not just the local agency. A single local agency through poor decision making or unfair application of these arbitrary standards could have a significant impact on all of the other agencies who conduct these hearings.

The rules of conducting hearing boards have been in place and have worked effectively since 1974. They have been fair and consistently interpreted, applied and understood throughout the State. Changing existing law to allow for binding arbitration would water down the current statewide system and ensure that it was inconsistent in both interpretation, understanding and its application which would have far reaching effects.

For these reasons, the Department of State Police urges the Committee to give Senate Bill 420 an unfavorable report.



Integrity . . . Fairness . . . Service

BALTIMORE COUNTY POLICE DEPARTMENT

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(410) 887-4933 (Fax)

*Terrence B. Sheridan
Chief of Police*

BILL NO.: SB 420

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

SPONSOR: Senator Frösh, et al.

COMMITTEE: Appropriations

POSITION: OPPOSE

The Baltimore County Police Department OPPOSES the passage of Senate Bill 420. This bill amends the Law Enforcement Officers' Bill of Rights by permitting the composition of hearing board to go to binding arbitration and would take away the right of a police chief to make the final decision on the punishment of a police officer found guilty by a hearing board.

This bill strikes at the heart of a police chief's ability to manage a police department by taking away the right to fire police officers who do not deserve to be police officers. Under this bill, the hearing board would have the final authority over punishing a police officer, which would include terminating the officer. Under the current system, the police chief reviews the decision of the hearing board. The police chief can accept the decision, increase or decrease the punishment recommended by the hearing board. SB 420 also takes away the option of a police chief to decrease punishment and give a police officer another chance.

The bill would also permit the composition of a hearing board to go to binding arbitration. This could result in the composition of a hearing board that neither side agrees with.

Accordingly, the Baltimore County Police Department requests an UNFAVORABLE report on Senate Bill 420. For more information, please contact Gregory R. Rothwell, Esq., Legislative Liaison at 410-887-2211.

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THE PRINCE GEORGE'S COUNTY GOVERNMENT

LEGISLATIVE POSITION

SB 420: Law Enforcement Officers' Bill of Rights-Hearing Boards-Binding Arbitration

Sponsors: Senators Frosh, Garagiola, Green, and Jimeno

Position: OPPOSE

Issue: The current Law Enforcement Officers' Bill of Rights reads that a law enforcement agency or the government authority that has collective bargaining authority for the law enforcement agency may negotiate with the union an alternate hearing board from that provided by the statute. The statute currently gives the Chief of Police the ability to pick the members of the hearing board from the sworn members of the Department. The statute currently states that the information of a hearing board "is not subject to collective bargaining." This bill would change that language to read, "If authorized by local law, this paragraph is subject to binding arbitration."

Objection: The County opposes this legislation. The bill, if passed, would start police agencies that have collective bargaining on the path to losing control of the disciplinary process within their respective departments. The bill would permit a bargaining agent such as the Fraternal Order of Police (FOP) to raise the makeup of hearing boards and the Chief's authority to discipline in the collective bargaining process. When an agreement cannot be reached on the FOP's request, the matter would go to arbitration and the arbitrator's ruling would be binding on the police department. Experience with at least one department, which has an alternative hearing board, has been negative. The hearing board for that County department is made up of a chief's appointment, an FOP appointment and an arbitrator. Needless to say, that agency's experience has not been conducive to holding officers accountable to the department's rules and regulations. The Maryland Sheriffs' Association and the Maryland Chiefs' Association also oppose this legislation.

Fiscal Impact: The bill's changes would not significantly affect local operations or finances. Any future impacts arising from decisions of arbitration processes, rather than currently constituted hearing boards, cannot be reliably predicted.

Committee: APPROPRIATIONS

Hearing Date: April 4, 2006; 1:00 PM

Prepared by: Prince George's County Office of Legislative Affairs



MARYLAND MUNICIPAL LEAGUE
The Association of Cities and Towns

TESTIMONY

April 4, 2006

Committee: House Appropriations

Bill: SB 420 – Law Enforcement Officers’ Bill of Rights – Hearing Boards – Binding Arbitration

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes SB 420 – Law Enforcement Officers’ Bill of Rights – Hearing Boards – Binding Arbitration. This legislation would repeal prohibitions against making actions regarding the formation of a law enforcement officers’ hearing board and decisions by a hearing board the subject of binding arbitration.

The League has consistently opposed binding arbitration as an alternative in both collective bargaining agreements and in regard to determinations of hearing boards created under the Law Enforcement Officers’ Bill of Rights. Fourteen of the 85 municipalities with police departments currently have collective bargaining agreements and could potentially be affected by SB 420.

Over 10 years ago, legislation agreed to by MML and enacted by the General Assembly addressed the concerns of the Maryland Fraternal Order of Police (FOP) with regard to the recommendations of hearing boards concerning disciplinary actions to be taken against police officers found guilty of wrongdoing. Yet the FOP periodically generates additional legislation to stretch current law to eventually include mandatory binding arbitration for certain hearing board findings. The League objects to the incremental legislative steps leading to that end and therefore respectfully requests that that this committee report SB 420 unfavorably.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock Executive Director
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FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE 35
SENATE BILL 420

Senate Bill 420

SUPPORT

February 22, 2006

Judicial Proceedings Committee

Law Enforcement Officer's Bill of Rights - Hearing Board - Binding Arbitration

Six jurisdictions have authorized Binding Arbitration - Anne Arundel County, Baltimore County, Prince George's County, Montgomery County, Ocean City, and Aberdeen, Maryland.

This bill would only apply to those jurisdictions, plus any that would authorize Binding Arbitration in the future.

All jurisdictions that have Collective Bargaining Rights may now negotiate the alternative method of forming a hearing boards. This is current law.

Again, current law does not permit LEOBR issues to be subject to Binding Arbitrations. But does permit them to be subject to negotiation.

How Does The System Work Now?

- A. Police organization and management negotiate all items, which include salaries, working conditions, and pensions.
- B. If an impasse is declared the matters are referred to neutral arbitrator.
- C. If mediation fails, the arbitrator requires, both the FOP (Police Organization) and Management to submit Separate Final Offers. (Typically)
- D. These final offers must contain all issues/items that either party wants included in the new contract.
- E. The arbitrator holds hearings and at the conclusion of the hearing the arbitrator makes an award in accordance with the law.

Conclusion:

The legislation permits the hearing board and the decision of the hearing board subject to Binding Arbitration in "six jurisdictions where binding arbitration is already authorized." This legislation recognizes the fact that Police Officers risk their lives and personal safety and in turn they should be provided absolute fairness in their process of discipline and a modernization of the LEOBR.

February 16, 2006

Thomas B. Stone, Jr.
Representing Montgomery County FOP 35
301 - 762 - 8800



**MARYLAND STATE LODGE
FRATERNAL ORDER OF POLICE®,
LEGISLATIVE COMMITTEE**

BILL NO: SB 420

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

SPONSORS: Senators Frosh, Garagiola, Green, and Jimeno

COMMITTEE: Judicial Proceedings

POSITION: Support

The Maryland Fraternal Order of Police strongly supports Senate Bill 420, which would allow negotiations regarding hearing boards, if authorized by local law, to be subject to binding arbitration. This bill only applies to jurisdictions where voters have elected to grant binding arbitration as part of the collective bargaining process. Therefore this bill only affects Anne Arundel County, Baltimore County, Prince George's County, Montgomery County, Ocean City, and Elkton.

The disciplinary process has always been subject to negotiations at the local level. This bill will allow for local lodges to negotiate that process in jurisdictions that now have the arbitration aspect as part of their negotiations process.

The Maryland State Lodge Fraternal Order of Police requests a **FAVORABLE REPORT** on SB 420.

Contacts: Errol Etting
Legislative Chairman
410-404-8335

Officer O'Brien Atkinson, IV
2nd Vice President, MD FOP
410-320-6557

FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE 35
SENATE BILL - 420

Senate Bill 420
April 04, 2006

SUPPORT
Appropriations Committee

Law Enforcement Officer's Bill of Rights - Hearing Board - Binding Arbitration

Six jurisdictions have authorized Binding Arbitration - Anne Arundel County, Baltimore County, Prince George's County, Montgomery County, Ocean City and Elton, Maryland.

This bill would only apply to those jurisdictions, plus any that would authorize Binding Arbitration in the future. (Presumably by Referendum)

All jurisdictions that have Collective Bargaining Rights may now negotiate the alternative method of forming a hearing board. This is current law.

Again, current law does not permit LEOBR issues to be subject to Binding Arbitrations. But does not permit them to be subject to negotiation.

How Does the System Work Now?

- A. Police organization and management negotiate all items, which include salaries, working conditions, and pensions.
- B. If an impasse is declared the matters are referred to neutral arbitrator.
- C. If mediation fails, the arbitrator requires, both the FOP (Police Organization) and Management to submit Separate Final Offers. (Typically)
- D. These final offers must contain all issues/items that either party wants included in the new contract.
- E. The arbitrator holds hearings and at the conclusion of the hearing the arbitrator makes an award in accordance with the law.

Conclusion:

The legislation permits the hearing board and the decision of the hearing board subject to Binding Arbitration in "six jurisdictions where binding arbitration is already authorized." Should local jurisdictions that presently have Binding Arbitration do not wish it to be extended to panel etc. they have local option to do so. This legislation recognizes the fact that Police Officers risk their lives and personal safety and in turn they should be provided absolute fairness in their process of discipline and a modernization of the LEOBR.

April 04, 2006

Thomas B. Stone, Jr.
Representing Montgomery County FOP 35
301- 762 - 8800

*non delegates
document
making
regulation*

Local Pull

*NO
indications
of problem
in process*



State Headquarters
8720 Georgia Avenue
Suite 500
Silver Spring, Maryland 20910

301.495.7004 phone
301.495.9463 fax
ProgressiveMaryland.org
Contact@ProgressiveMaryland.org

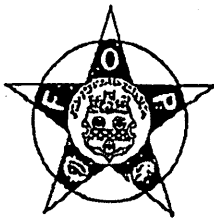
SUPPORT
SB420—Law Enforcement Officers' Bill of Rights—Hearing Boards—Binding Arbitration

Mr. Chairman and Members of the Judicial Proceedings Committee, Progressive Maryland strongly supports SB420 and urges a favorable report.

Progressive Maryland is a statewide grassroots advocacy organization that fights for legislation to improve the lives of working families. Our support comes from 25,000 individual dues-paying members, and our partnership with more than 50 of Maryland's largest community, faith-based, labor, and civil rights groups.

While all State police departments are currently covered by collective bargaining agreements, this bill would remove the prohibition against binding arbitration for future contract negotiations. As it stands now, the disciplinary hearing board and/or disciplinary hearing is heavily weighted against an officer. Allowing binding arbitration as an alternative is a basic civil and worker's right, one that adds balance to negotiations that are otherwise tilted toward the employer.

Progressive Maryland urges a favorable report on SB420.



BALTIMORE COUNTY LODGE NO. 4
FRATERNAL ORDER OF POLICE
INCORPORATED

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COLE B. WESTON
LODGE PRESIDENT

DAVID J. FOLDERAUER
LODGE SECRETARY

April 4, 2006

The Honorable Norman H. Conway
Chairman, House Appropriations Committee
Maryland House of Delegates
House Office Building, Room 121
12 Bladen Street
Annapolis, Maryland 21401-1991

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

Dear Chairman Conway:

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, House Appropriations Committee



Fraternal Order of Police
Maryland State Lodge

Senate Bill 420

Senate Bill 420

SUPPORT

April 4, 2006

Appropriations Committee

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

Good afternoon. I am Walter E. Bader, President of Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify in support of Senate Bill 420 on behalf of the Fraternal Order of Police.

Under current law, the Law Enforcement Officers' Bill of Rights allows for collective bargaining as to an alternate method of forming a hearing board and also as to whether the decision of that board is final.

Hence, in all jurisdictions with collective bargaining these LEOBR matters are treated the same as all other subjects of collective bargaining and may be referred to impasse procedures for resolution, except that they are not subject to binding arbitration impasse procedures.

SB 420 narrowly addresses the inconsistency between current State law and local laws that authorize binding arbitration as a method of resolving bargaining impasse. Current State law prohibits binding arbitration in LEOBR matters that, were it not for State law, would be authorized subjects of collective bargaining with binding arbitration under local law.

SB 420 is a procedural bill to modernize the LEOBR by simply making it consistent with existing local binding arbitration statutes. **It does not alter the composition of hearing boards, nor does it make decisions of hearing boards final.** It continues to allow collective bargaining in these matters and it allows bargaining disputes to go to arbitration only in those jurisdictions where binding arbitration has been authorized by the voters and elected local legislative bodies.

Where disputes as to composition of hearing boards or finality of board decisions go to impasse under this bill, local officials and police chiefs are free to make proposals, oppose proposals, or support proposals before any impasse neutral before that neutral issues an award in the matter. It is the nature of binding arbitration that all positions be accorded fair and impartial consideration.

Prior legislative attempts to amend the LEOBR, such as HB 1296 introduced in 2000, prompted unwarranted concerns that binding arbitration would be created by passage, that elected official accountability for alleged "police misconduct" would be gone, and that it would violate a 1994 "deal" between the Maryland Association of Counties ["MACo"] and the Maryland State Lodge, FOP.

This bill, SB 420, is more narrowly tailored to allay reasonable concerns and makes it clear that it does not create any right to binding arbitration in any jurisdiction where it otherwise does not exist. **Only the voters and local elected governing bodies may provide that authorization before its provisions relating to binding arbitration would apply.** Further, under this bill, local elected officials could amend local laws to specifically remove the alternate method of forming a hearing board and/or the finality of decision from the scope of bargaining that is subject to binding arbitration.

The 1994 "deal" did not prevent collective bargaining over the composition of hearing boards or finality of decisions, nor did it address binding arbitration or modernization of the LEOBR. That "deal" pertained only to former Article 27 § 731 (c), now § 3-108(d) of the Public Safety Article (Senate Bill 1, 2003). This provision is left fully intact by this bill. Moreover, this twelve-year old "deal" dates back three legislative terms and predates binding arbitration laws in four of six local jurisdictions.

SB 420 is narrowly tailored, local option legislation that modernizes existing collective bargaining provisions of the LEOBR and makes them consistent with local bargaining laws only in those jurisdictions where the voters have authorized binding arbitration.

We urge your favorable consideration.

Thank you.

Walter Bader, President