

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1228
Judiciary

(Delegate Carter, *et al.*)

Baltimore City - Law Enforcement Officers' Bill of Rights - Hearing Boards

This bill specifies that, under the Law Enforcement Officers' Bill of Rights (LEOBR), a hearing board for disciplinary complaints involving a member of certain police agencies in Baltimore City must consist of one retired judge, selected from a rotating pool by the Baltimore City Police Commissioner, a representative of the Mayor of Baltimore, and a representative of the Civilian Review Board of Baltimore City. Prior to the hearing, the hearing board must review the charges for legal sufficiency based on the agency's code of conduct and general orders. The board may dismiss the charges if they are found to be legally insufficient. The bill does not alter provisions relating to a summary judgment for minor violations of agency rules and regulations.

Fiscal Summary

State Effect: Potential operational difficulties for the Chief Judge of the Court of Appeals in selecting retired judges to serve on a temporary basis. Any potential resulting financial impact on the Judiciary cannot be readily quantified.

Local Effect: Baltimore City expenditures may increase by \$74,000 and \$100,000 annually beginning in FY 2010. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill is applied to law enforcement officers who are members of the Police Department of Baltimore City, the Baltimore City School Police

Force, the Baltimore City Watershed Police Force, the Housing Authority of Baltimore City Police Force, or the Baltimore City Sheriff's Department.

Current Law: Hearing boards for LEOBR purposes must consist of at least three members who are appointed by the chief of the law enforcement agency 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 have had no part in the investigation or interrogation of the law enforcement officer.

At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed. If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State must function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency is under investigation, the Governor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

If the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor, or that official's designee, must function as the chief for LEOBR purposes.

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.

Provisions Relating to Retired Judges

A retired judge may accept employment in which all or part of the compensation for the employment comes from municipal, county, or State funds, if the retiree immediately notifies the Board of Trustees of the Judges' Retirement System of the retiree's intention to accept the employment and the compensation that the retiree will receive.

The board must reduce the retirement allowance of a retiree who accepts such employment if the retiree's current employer is any unit of State government and the retiree's employer at the time of the retiree's last separation from employment with the State before the retiree commenced receiving a service retirement allowance was also a unit of State government. The reduction must equal the amount that the sum of the

retiree's annual retirement allowance and the retiree's annual compensation exceeds the amount of the compensation on which the retirement allowance is based.

If a retiree accepts such employment and is subsequently awarded retirement benefits because of that employment, the board must reduce the retiree's benefits by the amount of the retirement benefits resulting from the subsequent employment if the retiree's current employer is any unit of State government and the retiree's employer at the time of the retiree's last separation from employment with the State before the retiree commenced receiving a service retirement allowance was also a unit of State government.

These provisions do not apply to a retiree who is temporarily assigned to sit in a Maryland court, or is employed as a member of the faculty of a public institution of higher education in Maryland. (*See State Personnel and Pensions Article, § 27-406.*)

The Chief Judge of the Court of Appeals may assign a former judge, if certain conditions and qualifications are met, to sit temporarily in any court if the temporary assignment is approved by the administrative judge of the circuit in which the former judge is to be assigned. In Baltimore City the former judge must have served in the aggregate at least three years as a judge. A judge considered for a temporary assignment may not be engaged in the practice of law and may not be temporarily assigned for more than 180 working days in any calendar year, unless for a continuing case. (*See Courts Article, § 1-302.*)

State Fiscal Effect: The Administrative Office of the Courts (AOC) is concerned that this bill may render retired judges in the pool for service as a LEOBR hearing board ineligible for a temporary assignment to a court by the Chief Judge. AOC believes that this bill may additionally violate the dual office holding provisions of the Maryland Constitution and violate separation of powers provisions, since a former judge serving as a hearing board could be construed as being engaged in the practice of law. It is unknown how many retired judges would elect to forego or reduce retirement benefits by serving on a hearing board in Baltimore City.

Local Fiscal Effect: Baltimore City indicates that the city police department intends to pay a retired judge selected from the pool an annual salary of between \$74,000 and \$100,000. However, the bill would also allow for the selection and payment of retired judges on a per diem basis.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Judiciary (Administrative Office of the Courts),
Department of State Police, Department of Legislative Services

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ncs/hlb

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