

SB 752 - Testimony Police Officers Promotional App

Uploaded by: Hayes, Antonio

Position: FAV

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Legislative District 40
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Finance Committee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Hayes in Support of Senate Bill 752: Baltimore City - Police Officers
- Promotional Appointments**

March 3, 2021

Dear Chairperson Smith and Members of the Judicial Committee,

The Baltimore City Police Department is the 8th largest municipal police force in the United States, staffed by nearly 3,100 civilian and sworn personnel. The department's jurisdiction covers Maryland's largest city, with a population of 614,000. Such a large police force requires accountability and transparency within their department.

After the death of Freddie Gray, the Department of Justice found that “serious deficiencies in BPD’s supervision of its enforcement activities...contribute to the Department’s failure to identify and correct unconstitutional policing.” To rectify these issues, the Consent Decree mandated a number of systemic changes in how the Department supervises its members to provide close and effective supervision. This January, an ACLU report showed that from 2015 until 2019, there were over 13,000 misconduct complaints filed against around just 1,800 BPD officers.

As a part of this Consent Decree, the Baltimore Police Department created a new policy to guide the promotional process for those seeking positions within the department. The policy received input from Baltimore City residents as well as members of the Department.

Senate Bill 752 will alter the procedures used by the Police Commissioner of Baltimore City to award promotional appointments. This will authorize the Commissioner to remove certain applicants from the list of eligible appointees if the Civilian Review Board has sustained a certain complaint against the applicant during a certain time period. The Civilian Review Board takes complaints that allege the use of excessive force, abusive language, harassment, false arrest and false imprisonment. Moreover, it requires a holistic review of each candidate’s

qualifications, including prior performance as observed by their commanders, recognitions, awards, and commendations, the nature of any complaints and/or sustained disciplinary infractions.

The current law requires that although a Commissioner may set certain qualifications, they are only permitted to consider the candidate's score on the promotional exam when making appointments. The Department must make appointments from those applicants who place within the top five positions on the active promotional list. This requirement is referred to as the "Rule of 5" and does not take into account the possibility that those top 5 candidates may not be suitable for a position.

This bill is a crucial step towards police reform for the citizens of Baltimore. Increased accountability within the BPD will ensure a fairer justice system for all.

There are attached amendments approved by the Baltimore City Senate Delegation.

Thus, I urge a favorable report with amendments on SB 752.

Respectfully,



Senator Antonio L. Hayes
40th Legislative District - MD

SB0752-863426-01.pdf

Uploaded by: Hayes, Antonio

Position: FAV



SB0752/863426/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

26 FEB 21
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BY: Senator Hayes
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 752
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after “Board” insert “or the Baltimore City Police Department’s Disciplinary Review Committee”.

AMENDMENT NO. 2

On page 2, in line 1, strike “TWENTY” and substitute “**25% OF THE**”; in the same line, after “list” insert “**, WHICH SHALL BE CALCULATED BY DETERMINING 25% OF THE TOTAL NUMBER OF POSITIONS ON THE LIST, ROUNDED DOWN TO THE NEAREST WHOLE INTEGER. THE TOP OR HIGHEST POSITIONS SHALL BE CALCULATED ON THE ISSUANCE OF EACH NEW PROMOTIONAL LIST, AND SHALL REMAIN FIXED FOR THE LIFE OF THAT LIST**”; in line 3, after “the” insert “**TOP OR HIGHEST**”; in the same line, strike “NINETEEN highest”; strike beginning with the comma in line 4 down through “list” in line 5; in line 7, strike “TWENTY” and substitute “**25%**”; and in line 19, after “BOARD” insert “**OR THE DEPARTMENT’S DISCIPLINARY REVIEW COMMITTEE**”.

SB 752.pdf

Uploaded by: Melancon, Eric

Position: FWA



BALTIMORE POLICE DEPARTMENT



Brandon M. Scott
Mayor

Michael S. Harrison
Police Commissioner

TO: The Honorable Members of the Senate Judicial Proceedings Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Dept.

RE: Senate Bill 752 Baltimore City – Police Officers – Promotional Appointments

DATE: March 3, 2021

POSITION: SUPPORT WITH AMENDMENT

Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee, please be advised that the Baltimore Police Department **supports with amendments** Senate Bill 752.

In the 2016 Department of Justice investigation conducted after the in-custody death of Freddie Gray, the DOJ found that “*Serious deficiencies in BPD’s supervision of its enforcement activities...contribute to the Department’s failure to identify and correct unconstitutional policing.*” To rectify that, the Consent Decree mandated a number of systemic changes in how the Department supervises its members to provide close and effective supervision. The reasoning behind that is strong, capable leadership is absolutely necessary to not only effectuate the type of cultural transformation needed within the Department but to be able and willing to hold officers accountable if they fail to police in a manner that is consistent with the Constitution, other laws, and BPD policy.

As mandated by the 3rd year Monitoring Plan, the Baltimore Police Department worked with its federal Consent Decree Monitoring Team and the Department of Justice to develop the Department’s new policy to guide the promotional process for those seeking to ascend to the ranks of Sergeant and Lieutenant. The policy, which can be viewed at this link: <https://www.baltimorepolice.org/1721-draft-promotion-classified-ranks>, received input from Baltimore City residents as well as members of the Department.

Policy 1721 establishes a fair and equitable promotional process by ensuring that all interested members of the Department are aware of potential openings and understand the criteria for promotion as well as the process for selection. Moreover, it requires a holistic review of each Candidate’s qualifications, including prior performance as observed by their commanders, recognitions, awards, and commendations, early intervention system data, and inquiries into the nature of any complaints and/or sustained disciplinary infractions, regardless of their ultimate disposition.

This holistic assessment of a Candidate’s suitability represents a significant departure from the way that promotional selections were made in the past. The current law actually requires that although a Commissioner may set certain minimum qualifications, he/she is only permitted to consider the Candidate’s score on the promotional exam when making appointments. The Department must make appointments from those applicants

who place within the top five positions on the active promotional list. This requirement is referred to as the “Rule of 5” and does not take into account the distinct possibility that one or, perhaps all of those possessing the top five test scores are unsuitable for supervisory positions.

There have been several instances where candidates have been deemed unsuitable for promotion, but the Department has been forced to promote the candidate anyway because of the Rule of Five. For example:

- One candidate may have been charged or is under active investigation for serious ethical or misconduct allegations.
- Another candidate may have made documented statements that wholly reject the Consent Decree reforms, which would render them incapable of effectively and appropriately supervising subordinates under our new Consent Decree standards.
- Another candidate may have been arrested for criminal charges, but remains active on eligibility lists.
- Another candidate may have as many as five or more sustained disciplinary cases against him/her for serious use of force violations that carried more than 30 days lost wages as a penalty.

In each of these cases, the Rule of Five allows the Department to pass over them for consideration, however, once a total of four unsuitable candidates have been identified, the Department is now forced to authorize promotion for the next person on the list from that moment forward. If a fifth, consecutive, unsuitable candidate is then identified, the Department is forced to choose the “least-worst” option among the five. This is not a theoretical exercise for BPD; indeed, this very scenario has actually happened in the past two years.

The Department is not asking for the law to be struck completely, rather, we are respectfully requesting that you provide the Department with greater flexibility in prioritizing quality candidates for promotion by authorizing the following steps that are clarified with the proposed sponsor amendments:

- ✓ Enable the Department to make appointments from those applicants who place within the top **25% of the** positions on the eligibility list; and
- ✓ Empower the Department with the option to strike any Candidate who meets all the following criteria:
 - Found sustained, by the Civilian Review Board or the Department’s Disciplinary Review Committee, for a misconduct complaint that was received after he/she applied for the promotion but before a position is available for promotion for that applicant AND
 - Termination is a possible punishment for the allegation, if he/she were to be found guilty.

The changes contemplated in this bill are necessary to allow the Department to comply with the Consent Decree paragraphs related to promotions, but more importantly, they will allow the Department to elevate the next generation of reform-minded leaders into supervisory and managerial ranks while also promoting a more positive culture of accountability and a better structure of upward mobility within BPD.

Therefore, the Baltimore Police Department respectfully requests a **favorable with amendments** report on Senate Bill 752. Thank you for allowing us to comment on this important piece of legislation. If you should have any questions, feel free to reach me at michelle.wirzberger@baltimorepolice.org or via telephone at 443-915-3155.

FOP Testimony in Opposition to SB0752.pdf

Uploaded by: Cohen, Elliot

Position: UNF

1 March 2021

The Honorable William C. Smith Jr.
Senate Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, Maryland

**Re: Senate Bill 0752 – Promotions – Baltimore Police Department
Request for UNFAVORABLE Opinion**

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

As a Baltimore City resident, a current sergeant within the Baltimore Police Department (BPD), and as Baltimore City FOP Lodge #3's State Trustee, I submit this testimony in opposition to **SB0752 - Baltimore City – Police Officers - Promotional Appointments**.

The proposed bill is meant to alter the civil service promotional process by allowing the Police Commissioner to select from any of the highest twenty (20) scorers on a promotional eligibility list, instead of the current five (5). This change would open what is currently an objective process to favoritism, politicization, and abuse.

The current promotional testing has two parts. The first part is a multiple-choice written examination. If an officer's score is high enough on that portion, they advance to the oral board portion. The oral board portion involves the officer answering various questions in front of officers from outside the BPD of similar rank to the promotion being sought. The scoring from the written examination and oral board examination are then weighted and combined. Candidates (police officers and sergeants) are then ranked on the eligibility list based on their combined score. Currently, when the Police Commissioner fills a vacancy, he/she must select from the top five (5) highest scorers on the list. When one is selected, the next highest scorer moves into the top five (5). This is what is commonly referred to as the "Rule of 5".

Expanding the Rule of 5 to the Rule of 20, as SB0752 suggests, implies that the 20th highest scorer is actually more qualified than the top 5 scorers. If at the end of a test the 20th highest scorer is actually better suited than the top 5 scorers then it's a bad test. The Baltimore Police Department has complete control over the written exam and Oral Boards. A third party may write the questions, but the BPD dictates the subject matter, approves the questions, and approves the scoring rubrics. As far as I am aware, the BPD has made no effort to improve the testing so that those who do score well are who the BPD deems to be most qualified.

Civil Service exams are meant to prevent any undue influence on the promotional process. The BPD will argue that the newly formed Promotion Committee insulates the selection process from the police commissioner's influence. However, the Promotion Committee is made up entirely of personnel selected by the police commissioner and who owe their continuing employment to him/her. In fact, the policy states that the police commissioner has "complete discretion over the composition of the Promotion Committee with the exception of the Equity Officer." The Equity Officer is the only non-voting member of the committee. Even if the committee did act as a buffer, the policy itself could be

rescinded or revised on the commissioner's order at any time. I am making no comment on Police Commissioner Harrison's intentions. He may be truly objective in his decision making. But there is no way of predicting the intentions of future police commissioners.

Civil Service hiring and promotional rules are born from the abuses of the past. Expanding the Rule of 5 to the Rule of 20 would render these protections meaningless. If the BPD truly feels they are not getting the objectively best candidates for promotion then they should improve the tests. Skipping the highest scorer for the 20th highest scorer would not only raise suspicions but contribute to an environment where officers already feel they are being treated unfairly.

I am more than happy to discuss further any of the points raised above. Thank you for the opportunity to present testimony on this bill.

Sgt. Elliot Cohen
FOP Lodge #3 State Trustee
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