
CITY OF BALTIMORE

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TO: Members of the Senate Judicial Proceedings

FROM: James L. Shea, City Solicitor

RE: SENATE BILL 441 – Baltimore City – Civilian Review Board

POSITION: OPPOSE

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **opposes** Senate Bill (SB) 441.

Senate Bill 441 alters the powers and duties of the Baltimore City Civilian Review Board (“the Board”). The bill expands the jurisdiction of the Board to include all complaints of misconduct against police officers. The bill also allows for the Board to function as a police accountability board under the Maryland Public Safety Art. Sec. 3-102. The bill also provides that instead of the Mayor, the Board will hire staff to carry out its functions. Additionally, an employee or member of Baltimore City government who is not a member of the Board may not control hiring decisions made under this paragraph. The Board still conducts simultaneous investigations with the Baltimore Police Department’s (“BPD”) Internal Investigation Division but also investigates simultaneously with BPD’s administrative charging committee. The Board also sends its recommendations to the Administrative Charging Committee instead of the head of BPD. The Administrative Charging Committee has the final decision-making responsibilities with regard to appropriate discipline, but it may not take final action until after it has considered the recommendation of the Board.

SB 441 also amends the Public Safety Article of the Maryland Code Sec. 3-102 to provide for a special section that applies only to Baltimore City. In that section, SB 441 reiterates that the Board may function as a police accountability board. That section also provides that the public local laws of Baltimore City govern the powers and duties of the Board and its membership will be determined according to Sec.164-3 of the public local law. The bill also states that the Baltimore Civilian Review Board may sue and be sued and hire or contract for legal representation. Finally, that same section provides for financing the Board’s operations by requiring that the City budget include an appropriation of not less than 2% of the total budget of the Baltimore City Police Department for the Board. The funds may be used for employing staff and investigators, hiring a contracting for legal counsel, and any other expenditure approved by a quorum of the Board.

BCA opposes SB 441 for several reasons. First, the provisions related to the hiring of staff are at odds with the Baltimore City Charter and Public Local Laws. Article IV, Sec. 6 of the City

Charter gives the Mayor the sole power of appointment of “municipal officers.” “Municipal officers” include members of boards and commissions. Charter, Art. 1, Sec. 2(j). Pursuant to the Baltimore City Public Local Law Sec. 16-42, the Board is an agency within Baltimore City. Similar to any City agency, the Board cannot fire employees independent of the City Human Resources Department and Civil Service Commission pursuant to their Charter powers. In other words, SB 441 encroaches on powers set forth in the Charter and Public Local Laws, and in doing so violates Art. XI-A of the Md. Constitution as explained below.

Second, on page 7 of SB 441, the drafter declares that the civilian review board can sue and be sued and may hire or contract for legal representation. As a municipal agency, the Board is not a legal entity and therefore does not have the capacity to sue and be sued See. PLL, 16-42 and Baltimore City Charter, Art. 1, Sec. 2(j). This part of the bill is therefore illegal.

Finally, the provisions related to the annual budget of Baltimore City are an unconstitutional violation of Art. XI-A of the Md. Constitution. The Maryland Court of Appeals has clearly defined the ability of the General Assembly to limit the authority of Baltimore City’s government:

“If the General Assembly, in its grant of powers to Baltimore City, subsequently concludes that the grant of powers contained a subject upon which the General Assembly should have authority to legislate, and not the City authorities, it can only accomplish this by amending or repealing the act granting and delineating the powers. The Legislature has the power to describe the field within which the local authorities may legislate, but having once done this, it cannot restrict or limit this field of legislation without changing its boundaries. The legislation in respect to the subjects contained in the granted powers is therefore committed exclusively to the local authorities and denied to the General Assembly, so long as the grant of powers remained unchanged. Any other interpretation would render the provisions of article 11A meaningless, and result in nullifying the purpose sought to be accomplished by its adoption. If the Legislature could change the grant of power by the simple expedient to passing an act in conflict with the legislation of the local authorities, it would result in the complete frustration of the object of the amendment.”

State’s Attorney of Baltimore City v. Baltimore City, 274 MD. 597 (1975).

While the General Assembly has the authority to determine what powers are to be exercised by Baltimore City or the charter counties, the General Assembly may not enact a public local law for the City or any charter county which modifies the powers so granted. This bill is a public local law that attempts to modify the fiscal powers granted to the City and exercised through the Charter.

We respectfully request an **unfavorable** report on SENATE BILL 441.