

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 786

(Senator McCray)(By Request - Baltimore City
Administration)

Judicial Proceedings

Baltimore City – Control of the Police Department of Baltimore City

This bill establishes the Baltimore Police Department (BPD) as an agency and instrumentality of Baltimore City (rather than the State of Maryland) effective January 1, 2025, contingent on the passage of an amendment to the Charter of Baltimore City that provides the transfer of control of BPD to Baltimore City and its ratification by the voters of Baltimore City at the 2024 general election. In addition, the bill establishes an Advisory Board on the Transfer of Control of the Police Department of Baltimore City to study potential issues related to the transfer. **The bill's provisions relating to the advisory board take effect June 1, 2021. The bill's other provisions take effect January 1, 2025, subject to the contingency.**

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances. Even though BPD is a State agency, funding for BPD is the responsibility of Baltimore City.

Local Effect: Assuming the charter amendment is adopted, potential significant increase in Baltimore City expenditures, as discussed below. Baltimore City revenues are not likely materially affected.

Small Business Effect: None.

Analysis

Bill Summary:

Provisions Relating to the Transfer – Subject to Contingency

The bill establishes BPD as an agency and instrumentality of Baltimore City (rather than the State), contingent on the passage of an amendment to the Charter of Baltimore City that provides the transfer of control of BPD to Baltimore City and its ratification by the voters of Baltimore City at the 2024 general election. BPD continues to be considered as an agency and instrumentality of the State for all actions arising out of acts, omissions, or events that have occurred prior to January 1, 2025, the date of transfer of control of BPD. For all actions arising out of acts, omissions, or events that occur on or after that date, BPD is considered an agency and instrumentality of Baltimore City.

Beginning January 1, 2025, as a result of BPD being established as an agency and instrumentality of Baltimore City, the mayor and the City Council of Baltimore City are authorized to amend the law relating to BPD in order to implement policy changes. In addition, the bill clarifies that BPD police officers continue to have the authority to make arrests, conduct investigations, and otherwise enforce the laws of the State conferred under Title 2 of the Criminal Procedure Article.

Advisory Board

The advisory board must study the potential issues related to the transfer of control of BPD from the State to the city, as specified. The Office of the Mayor of Baltimore City must provide staff for the advisory board. By December 1, 2021, the advisory board must submit an interim report of its initial findings and recommendations to the Baltimore City Council, the Governor, and the General Assembly. By December 1, 2022, the advisory board must submit its final report to the Baltimore City Council, the Governor, and the General Assembly.

Current Law:

History of the Baltimore Police Department

BPD was initially brought under State control by Chapter 7 of 1860. Chapter 367 of 1867 replaced Chapter 7 and provided for control of the police by a board of three commissioners who were to be elected by the General Assembly, and subject to removal by the legislature when it was in session, and by the Governor, though only for conviction of a felony, during the interim. The expenses of operating the police force were to be paid by the city.

The law governing BPD was substantially revised by Chapter 203 of 1966. Under Chapter 203, BPD was “constituted and established as an agency and instrumentality of the State of Maryland.” Chapter 203 established that BPD is operated by a single police commissioner who was to be appointed and subject to removal by the Governor. The city retained responsibility for funding the department. Chapters 39 and 40 of 2009 established that the police commissioner is subject to removal at the pleasure of the mayor.

While the city is responsible for the funding of BPD, the State retains the ability to amend the law relating to the department in order to implement policy changes.

Purpose of the Baltimore Police Department and Powers of Police Officers

Generally, the purpose of BPD is to safeguard the lives and safety of all persons within the city, to protect property within the city, and to assist in securing the equal protection of the laws of all persons. Within the boundaries of the city, BPD has the duty and responsibility to (1) preserve the public peace; (2) detect and prevent the commission of crime; (3) enforce the laws of the State, and of the mayor and City Council of Baltimore; (4) apprehend and arrest criminals and persons who violate or are lawfully accused of violating such laws and ordinances; (5) preserve order at public places; (6) maintain the orderly flow of traffic on public streets and highways; (7) assist law enforcement agencies of this State and any municipality of the United States in carrying out their respective duties; and (8) discharge the department’s duties and responsibilities with the dignity and manner, which inspires public confidence and respect.

All police officers of BPD, including members who may be designated by the commissioner to exercise the powers and duties of police officers, have the same powers, with respect to criminal matters and the enforcement of laws, as sheriffs, constables, police, and peace officers possessed at common law and have in their respective jurisdictions. Any person charged with the commission of a crime in the city, or in those areas outside the corporate limits of the city owned, controlled, operated or leased by the mayor and City Council of Baltimore, may be arrested by BPD police officers. Under Title 2 of the Criminal Procedure Article, police officers are generally granted the authority to make arrests, conduct investigations, and otherwise enforce the laws of the State, as specified.

Immunity of Police Officers of the Baltimore Police Department

BPD police officers have all the immunities and matters of defense available to sheriffs, constables, police, and peace officers in any suit (civil or criminal) brought against officers for acts done in the course of official duties.

BPD is considered a “local government” for purposes of the Local Government Tort Claims Act (LGTCa). However, at the same time, because BPD is a State agency, courts

have held that the department has sovereign immunity in State court for *direct* tort liability – *Baltimore Police Department v. Cherkes*, 140 Md. App. 282 (2001). In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent.

LGTCA defines “local government” to include counties, municipalities, Baltimore City, BPD, and various agencies and authorities of local governments, such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities. Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

Local Expenditures: Assuming the charter amendment is adopted, Baltimore City expenditures increase, potentially significantly, to the extent that the bill affects BPD’s or the city’s ability to be sued directly in tort or for the city to be sued directly for related federal civil rights violations. By designating BPD as an agency of Baltimore City, BPD is no longer entitled to sovereign immunity available to State agencies. Thus, it is reasonable to conclude that the city may be exposed to significantly higher damage awards.

It is assumed that Baltimore City can provide staff for the advisory board using existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1027 (Delegate Wells)(By Request - Baltimore City Administration) - Judiciary.

Information Source(s): Department of Public Safety and Correctional Services; Department of Legislative Services

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