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By: **Senator Della**

Introduced and read first time: February 4, 2005

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Department of Transportation - Personnel - Disciplinary Action**

3 FOR the purpose of requiring that certain regulations adopted by the Secretary of  
4 Transportation to govern the Department of Transportation's human resources  
5 management system provide that an appointing authority or a designated  
6 representative of the Department shall initiate certain steps before taking any  
7 disciplinary action related to employee misconduct; requiring the regulations to  
8 authorize the appointing authority or designated representative to suspend an  
9 employee, with or without pay, under certain circumstances; providing that the  
10 regulations shall require the appointing authority or designated representative  
11 to inform the Secretary of Transportation of certain charges within a certain  
12 amount of time if the employee is suspended without pay; providing that the  
13 regulations shall require that an employee be placed on leave with pay for a  
14 certain period of time under certain circumstances; providing that the  
15 regulations shall establish that an appointing authority or a designated  
16 representative and an employee may agree to the holding in abeyance of a  
17 disciplinary action for a certain period of time under certain circumstances; and  
18 generally relating to disciplinary action for Department of Transportation  
19 personnel.

20 BY repealing and reenacting, without amendments,  
21 Article - Transportation  
22 Section 2-103.4(a)  
23 Annotated Code of Maryland  
24 (2001 Replacement Volume and 2004 Supplement)

25 BY repealing and reenacting, with amendments,

1 Article - Transportation  
2 Section 2-103.4(d)  
3 Annotated Code of Maryland  
4 (2001 Replacement Volume and 2004 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - Transportation**

8 2-103.4.

9 (a) Without regard to the laws of this State relating to other State employees,  
10 the Secretary of Transportation may establish a human resources management  
11 system for employees of the Department and its units. Any human resources  
12 management system that the Secretary establishes under this section shall:

13 (1) Be based on merit;

14 (2) Include fair and equitable procedures for appointment, hiring,  
15 promotion, layoff, removal, termination, redress of grievances, and reinstatement of  
16 employees; and

17 (3) Permit employees to participate in the pension and retirement  
18 systems for employees of the State of Maryland authorized under Division II of the  
19 State Personnel and Pensions Article or any other pension and retirement systems  
20 authorized by law.

21 (d) (1) The Secretary shall adopt regulations to govern the human resources  
22 management system established under this section.

23 (2) The regulations shall address procedures for leave, appointment,  
24 hiring, promotion, layoff, removal, termination, redress of grievances, and  
25 reinstatement of employees and shall be presented to the Joint Committee on  
26 Administrative, Executive, and Legislative Review under Title 10, Subtitle 1 of the  
27 State Government Article.

28 (3) THE REGULATIONS SHALL PROVIDE THAT BEFORE TAKING ANY  
29 DISCIPLINARY ACTION RELATED TO EMPLOYEE MISCONDUCT, AN APPOINTING  
30 AUTHORITY OR DESIGNATED REPRESENTATIVE SHALL:

31 (I) INVESTIGATE THE ALLEGED MISCONDUCT;

32 (II) MEET WITH THE EMPLOYEE;

33 (III) CONSIDER ANY MITIGATING CIRCUMSTANCES;

34 (IV) DETERMINE THE APPROPRIATE DISCIPLINARY ACTION, IF ANY,  
35 TO BE IMPOSED; AND

1 (V) GIVE THE EMPLOYEE A WRITTEN NOTICE OF THE  
2 DISCIPLINARY ACTION TO BE TAKEN AND THE EMPLOYEE'S APPEAL RIGHTS.

3 (4) (I) THE REGULATIONS SHALL PROVIDE THAT THE APPOINTING  
4 AUTHORITY OR DESIGNATED REPRESENTATIVE MAY SUSPEND AN EMPLOYEE, WITH  
5 OR WITHOUT PAY, PENDING THE FILING OF CHARGES FOR ~~REMOVAL~~ TERMINATION.

6 (II) IF AN EMPLOYEE IS SUSPENDED WITHOUT PAY, THE  
7 APPOINTING AUTHORITY OR DESIGNATED REPRESENTATIVE SHALL PROVIDE TO  
8 THE SECRETARY THE CHARGES FOR ~~REMOVAL~~ TERMINATION WITHIN ~~44~~ 30  
9 CALENDAR DAYS AFTER THE FIRST DAY OF THE SUSPENSION PERIOD.

10 (III) IF THE APPOINTING AUTHORITY OR DESIGNATED  
11 REPRESENTATIVE FILES THE CHARGES FOR ~~REMOVAL~~ TERMINATION AFTER THE  
12 ~~44-DAY~~ 30-DAY PERIOD DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE  
13 EMPLOYEE SHALL BE PLACED ON LEAVE WITH PAY UNTIL THE SECRETARY  
14 RECEIVES THE CHARGES.

15 (5) THE REGULATIONS SHALL PROVIDE THAT AN APPOINTING  
16 AUTHORITY OR A DESIGNATED REPRESENTATIVE AND AN EMPLOYEE MAY AGREE TO  
17 THE HOLDING IN ABEYANCE OF A DISCIPLINARY ACTION FOR A PERIOD NOT TO  
18 EXCEED 18 MONTHS IN ORDER TO PERMIT AN EMPLOYEE TO IMPROVE CONDUCT OR  
19 PERFORMANCE.

20 [(3)] (6) Subject to the provisions of paragraph [(4)](7) of this  
21 subsection, the employee grievance procedures shall include, at a minimum, the  
22 following sequence of levels of appeal:

23 (i) Initially an aggrieved employee shall present any grievance to  
24 the appointing authority or a designated representative, who shall render a written  
25 decision;

26 (ii) Any appeal shall be presented to the Secretary or a designated  
27 representative, who shall render a written decision;

28 (iii) If the dispute is still unresolved, the appeal shall be referred to  
29 the Office of Administrative Hearings or a mutually agreed upon third party arbiter  
30 who may not hear grievances relating to classification, salary, or fiscal matters; and

31 (iv) For disciplinary actions only, either party may appeal any  
32 decision of the Office of Administrative Hearings or a third party arbiter to the  
33 Secretary of Budget and Management or that Secretary's designee.

34 [(4)] (7) These regulations shall include procedures that ensure that all  
35 employees of the Department covered by this section and all employees hired after  
36 June 1, 1992 shall be entitled to the same levels of appeal provided for in the State  
37 employees' grievance procedures contained in Title 12 of the State Personnel and  
38 Pensions Article. Any disciplinary action taken against such employees by the  
39 Department shall include the same levels of appeal contained in Division I of the  
40 State Personnel and Pensions Article and its implementing regulations.

1            [(5)]    (8)    (i)    During any stage of a complaint, grievance, or other  
2 administrative or legal action that concerns State employment by a full-time or  
3 part-time executive service, career service, or commission plan employee of the  
4 Department, or by a temporary or contractual employee of the Department, the  
5 employee may not be subjected to coercion, discrimination, interference, reprisal, or  
6 restraint by or initiated on behalf of the Department solely as a result of that  
7 employee's pursuit of a grievance, complaint, or other administrative or legal action  
8 that concerns State employment.

9                            (ii)    An employee of the Department may not intentionally take or  
10 assist in taking an act of coercion, discrimination, interference, reprisal, or restraint  
11 against another employee solely as a result of that employee's pursuit of a grievance,  
12 complaint, or other administrative or legal action that concerns State employment.

13                            (iii)    An employee who violates the provisions of this paragraph is  
14 subject to disciplinary action, including termination of employment.

15    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2005.