HOUSE BILL 765

P4, P1 4lr0102

By: **Chair, Appropriations Committee (By Request – Departmental – Budget and Management)**

Introduced and read first time: February 3, 2014
Assigned to: Appropriations

A BILL ENTITLED

AN ACT concerning

State Personnel – Authority to Set Compensation

FOR the purpose of altering certain provisions of law that authorize certain State officials or certain units of State government to take certain personnel actions and set the compensation of certain employees, staff, or positions in State government; authorizing certain State officials or certain units of State government to set the compensation of certain employees in certain positions; requiring the Secretary of Budget and Management, in consultation with the officials or units, to determine the positions for which the officials or units may set compensation; repealing the authority of certain officials or units to take certain personnel actions or set the compensation of certain employees, staff, or positions; providing that certain appointments, personnel actions, and setting of compensation be in accordance with the State budget; making stylistic and conforming changes; and generally relating to State personnel, hiring authority, and the authority to set compensation for certain State employees in State government.

BY repealing and reenacting, with amendments,
Article – Correctional Services
Section 8–206
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Economic Development
Section 2–115
Annotated Code of Maryland
(2008 Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Article – Environment
Section 9–1604
Annotated Code of Maryland
(2007 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–107(d) and 19–206(d)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 14–204(d)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 2–105, 14–503(g), and 31–105(c), (d), and (e)
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 8–305(b)
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 9–108(e)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

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

Article – Correctional Services

8–206.

(a) (1) With the approval of the Secretary, the Commission shall appoint an Executive Director.

(2) The Executive Director shall perform general administrative functions.

(3) The Executive Director serves at the pleasure of the Commission.

(b) (1) With the approval of the Secretary, the Commission shall appoint a Deputy Director and any other employees that the Commission considers necessary to perform general administrative and training management functions.

(2) The Deputy Director and other employees appointed under paragraph (1) of this subsection shall serve at the pleasure of the Commission.

[(c) With the approval of the Secretary, the Commission shall employ other individuals as necessary to carry out this subtitle.**]**

(C) IN ACCORDANCE WITH THE STATE BUDGET, THE COMMISSION MAY SET THE COMPENSATION OF:

[(d)**]** **(1)** **[**The**]** **THE** Executive Director**[**,**]** **AND** the Deputy Director**[**,**];** and

(2) **[**other employees of the Commission are entitled to receive compensation as established by the Commission in accordance with the State budget**]** **A COMMISSION EMPLOYEE IN A POSITION THAT:**

(I) IS UNIQUE TO THE COMMISSION;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(D) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE COMMISSION, SHALL DETERMINE THE POSITIONS FOR WHICH THE COMMISSION MAY SET COMPENSATION UNDER SUBSECTION (C) OF THIS SECTION.

Article – Economic Development

2–115.

(a) In accordance with the State budget, the Secretary **[**shall**]** **MAY** set the compensation of **A** Department **[**employees**]** **EMPLOYEE IN A POSITION THAT:**

(1) IS UNIQUE TO THE DEPARTMENT;

(2) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(3) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(b) The Secretary of Budget and Management shall determine**:**

(1) position categories for special appointments in the Department**; AND**

(2) IN CONSULTATION WITH THE SECRETARY, THE POSITIONS FOR WHICH THE SECRETARY MAY SET COMPENSATION UNDER SUBSECTION (A) OF THIS SECTION.

Article – Environment

9–1604.

(A) In addition to the powers set forth elsewhere in this subtitle, but subject to such rules or program directives as the Secretary may from time to time prescribe, the Administration may:

(1) Adopt and alter an official seal;

(2) Sue and be sued, plead, and be impleaded;

(3) Adopt bylaws, rules, and regulations to carry out the provisions of this subtitle;

(4) Maintain an office at such place as the Secretary may designate;

(5) **[**Employ**] SUBJECT TO SUBSECTION (B) OF THIS SECTION, EMPLOY** consultants, accountants, attorneys, financial experts, and other personnel and agents as may be necessary in its judgment, and fix their compensation;

(6) Establish regulations, criteria, or guidelines with respect to loans, loan agreements, loan obligations, grants, grant agreements, and grant obligations;

(7) Receive and accept from any source, private or public, contributions, grants, or gifts of money or property;

(8) Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to carrying out the powers in this subtitle to accomplish the purposes of the Administration;

(9) Make loans, enter into loan agreements, and accept and enforce loan obligations;

(10) Award grants, enter into grant agreements, and accept and enforce grant obligations;

(11) Subject to the prior approval of the Board and the Secretary, issue bonds under this subtitle; and

(12) Do all acts and things necessary or convenient to carry out the powers granted by this subtitle.

(B) (1) IN ACCORDANCE WITH THE STATE BUDGET, THE ADMINISTRATION MAY SET THE COMPENSATION OF AN ADMINISTRATION EMPLOYEE IN A POSITION THAT:

(I) IS UNIQUE TO THE ADMINISTRATION;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(2) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE SECRETARY, SHALL DETERMINE THE POSITIONS FOR WHICH THE ADMINISTRATION MAY SET COMPENSATION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

Article – Health – General

19–107.

(d) (1) The Commission may employ a staff in accordance with the State budget.

(2) The Commission, in consultation with the Secretary, **[**shall determine the appropriate job classifications and grades for all staff**]** **MAY SET THE COMPENSATION OF A COMMISSION EMPLOYEE IN A POSITION THAT:**

(I) IS UNIQUE TO THE COMMISSION;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(3) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE SECRETARY, SHALL DETERMINE THE POSITIONS FOR WHICH THE COMMISSION MAY SET COMPENSATION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

19–206.

(d) (1) The Commission may employ a staff in accordance with the State budget.

(2) The Commission, in consultation with the Secretary, **[**shall determine the appropriate job classifications and grades for all staff**] MAY SET THE COMPENSATION OF A COMMISSION EMPLOYEE IN A POSITION THAT:**

(I) IS UNIQUE TO THE COMMISSION;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(3) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE COMMISSION, SHALL DETERMINE THE POSITIONS FOR WHICH THE COMMISSION MAY SET COMPENSATION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

[(3)**] (4)** The Deputy Director and each principal section chief of the Commission serve at the pleasure of the Commission.

[(4)**] (5)** The Commission, in consultation with the Secretary, may determine the appropriate job classifications **[**and, subject to the State budget, the compensation**]** for the Executive Director, Deputy Director, and each principal section chief of the Commission.

Article – Health Occupations

14–204.

(d) (1) **(I)** The Secretary may employ a staff for the Board in accordance with the State budget.

(II) The Secretary may designate one of the staff as an executive director.

(2) The Secretary **[**shall determine the appropriate job classifications and grades for all staff**]** **MAY SET THE COMPENSATION OF AN EMPLOYEE OF THE BOARD IN A POSITION THAT:**

(I) IS UNIQUE TO THE BOARD;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(3) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE SECRETARY, SHALL DETERMINE THE POSITIONS FOR WHICH THE SECRETARY MAY SET COMPENSATION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

Article – Insurance

2–105.

(a) In this section, "Secretary" means the Secretary of Budget and Management.

(b) All employees of the Administration that serve in a management, professional, or technical capacity are in the executive service, management service, or are special appointments in the State Personnel Management System and serve at the pleasure of the Commissioner.

(c) **[**The compensation of personnel under subsection (b) of this section shall be determined by the Commissioner and, if possible, in accordance with the State pay plan**]** **IN ACCORDANCE WITH THE STATE BUDGET, THE COMMISSIONER MAY SET THE COMPENSATION OF AN EMPLOYEE UNDER SUBSECTION (B) OF THIS SECTION IN A POSITION THAT:**

(1) IS UNIQUE TO THE ADMINISTRATION;

(2) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(3) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(D) THE SECRETARY, IN CONSULTATION WITH THE COMMISSIONER, SHALL DETERMINE THE POSITIONS FOR WHICH THE COMMISSIONER MAY SET COMPENSATION UNDER SUBSECTION (C) OF THIS SECTION.

[(d)**] (E)** (1) At least 45 days before the effective date of the change, the Commissioner shall submit to the Secretary each change to salary plans that involves increases or decreases in salary ranges other than those associated with routine reclassifications and promotions or general salary increases approved by the General Assembly.

(2) Reportable changes include creation or abolition of classes, regrading the classes from one established range to another, or creation of new pay schedules or ranges.

(3) The Secretary shall:

(i) review the proposed changes; and

(ii) at least 15 days before the effective date of the proposed changes, advise the Commissioner whether the changes would have an adverse effect on comparable State jobs.

(4) Failure of the Secretary to respond in a timely manner is not considered a statement of adverse effect.

14–503.

(g) (1) The Executive Director may employ a staff for the Plan in accordance with the State budget.

(2) Staff for the Plan are in the executive service, management service, or are special appointments in the State Personnel Management System.

(3) The Executive Director, in consultation with the Department of Budget and Management, **[**may determine the appropriate job classifications and grades for all staff**] MAY SET THE COMPENSATION OF A PLAN EMPLOYEE IN A POSITION THAT:**

(I) IS UNIQUE TO THE PLAN;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(4) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR, SHALL DETERMINE THE POSITIONS FOR WHICH THE EXECUTIVE DIRECTOR MAY SET COMPENSATION UNDER PARAGRAPH (3) OF THIS SUBSECTION.

31–105.

(c) (1) **[**The**] IN ACCORDANCE WITH THE STATE BUDGET, THE** Executive Director may employ and retain a staff for the Exchange.

(2) **(I) THE EXECUTIVE DIRECTOR MAY SET THE COMPENSATION OF AN EXCHANGE EMPLOYEE IN A POSITION THAT:**

1. IS UNIQUE TO THE EXCHANGE;

2. REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

3. DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(II) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR, SHALL DETERMINE THE POSITIONS FOR WHICH THE EXECUTIVE DIRECTOR MAY SET COMPENSATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(3) Except as provided in paragraphs **[**(3) and (4)**] (4) AND (5)** of this subsection, or otherwise by law, the Executive Director's appointment, retention, and removal of staff of the Exchange are not subject to Division I of the State Personnel and Pensions Article.

[(3)**] (4)** In hiring staff for functions that must be performed by State personnel under the Affordable Care Act or other applicable federal or State laws, the

Executive Director's appointment, retention, and removal of staff shall be in accordance with Division I of the State Personnel and Pensions Article.

[(4)**] (5)** In hiring staff for functions that have been and currently are performed by State personnel, the Executive Director's appointment, retention, and removal of staff shall be in accordance with Division I of the State Personnel and Pensions Article.

[(5)**] (6)** Except as provided in paragraph **[**(6)**] (7)** of this subsection, staff for all other positions necessary to carry out the purposes of this title shall be positions in the executive service or management service, or special appointments of the skilled service or the professional service in the State Personnel Management System.

[(6)**] (7)** The Executive Director may retain as independent contractors **[**or employees**]**, and set compensation for, attorneys, financial consultants, and any other professionals or consultants necessary to carry out the planning, development, and operations of the Exchange and the provisions of this title.

(d) The Executive Director shall determine the classification, grade, and compensation of **[**staff of the Exchange**] THOSE POSITIONS [**hired or**]** designated under subsection **[**(c)(3), (4), and (5)**] (C)(2)** of this section:

(1) in consultation with the Secretary of Budget and Management;

(2) with the approval of the Board; and

(3) when possible, in accordance with the State pay plan.

(e) (1) With respect to staff of the Exchange **[**hired or**]** designated under subsection **[**(c)(3), (4), and (5)**] (C)(2)** of this section, the Executive Director shall submit to the Secretary of Budget and Management, at least 45 days before the effective date of the change, each change to the Exchange's salary plans that involves increases or decreases in salary ranges other than those associated with routine reclassifications and promotions or general salary increases approved by the General Assembly.

(2) Reportable changes include:

(i) the creation or abolition of classes;

(ii) the regrading of classes from one established range to another; and

(iii) the creation of new pay schedules or ranges.

(3) The Secretary of Budget and Management shall:

(i) review the proposed change; and

(ii) at least 15 days before the effective date of the proposed change:

1. advise the Executive Director whether the change would have an adverse effect on comparable State jobs; and

2. if there would be an adverse effect, recommend an alternative change that would not have an adverse effect on comparable State jobs.

(4) Failure of the Secretary of Budget and Management to respond in a timely manner is deemed to be agreement with the change as submitted.

Article – Labor and Employment

8–305.

(b) (1) In accordance with the provisions of the State Personnel and Pensions Article, the Secretary may employ the staff necessary to carry out this title.

(2) In accordance with the State budget, the Secretary **[**shall**]** **MAY** set the compensation of **[**staff employed**]** **AN EMPLOYEE** under this subsection **IN A POSITION THAT:**

(I) IS UNIQUE TO THE DEPARTMENT;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(3) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE SECRETARY, SHALL DETERMINE THE POSITIONS FOR WHICH THE SECRETARY MAY SET COMPENSATION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

[(3)**]** **(4)** Subject to other applicable provisions of this title, the Secretary may appoint employees and set their powers and duties as necessary to carry out this title.

Article – State Government

9–108.

(e) (1) With the advice of the Commission, the Director may employ deputy directors and other staff in accordance with the State budget.

(2) Except as provided in paragraph (3) of this subsection or otherwise by law, the staff of the Commission is in the State Personnel Management System.

(3) **(I)** **[**A**]** **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A** deputy director is in the executive service of the State Personnel Management System.

(II) **[**However, a**]** **A** deputy director may be removed only for cause after being given notice and an opportunity for a hearing.

(4) (I) WITH THE APPROVAL OF THE COMMISSION AND IN ACCORDANCE WITH THE STATE BUDGET, THE DIRECTOR MAY SET THE COMPENSATION OF AN AGENCY EMPLOYEE IN A POSITION THAT:

1. IS UNIQUE TO THE AGENCY;

2. REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

3. DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(II) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE DIRECTOR, SHALL DETERMINE THE POSITIONS FOR WHICH THE DIRECTOR MAY SET COMPENSATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

[(4)**]** **(5)** (i) The Governor shall include in the State budget sufficient money for the Commission to hire, develop, and organize a staff to perform the functions of the Commission.

(ii) As deemed necessary by the Commission, the Commission shall hire experts including economists, gaming specialists, and lawyers.

(iii) 1. The Commission shall contract with an outside consultant to provide continual analysis of the gaming industry both within and

outside the State and support the licensing activities of the Commission and the Video Lottery Facility Location Commission.

2. The cost of the consultant required under this subparagraph may be divided proportionally among the video lottery operation licensees as determined by the Commission.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.