

SENATE BILL 687

P1

EMERGENCY BILL

8lr0953
CF HB 422

By: Senators Ferguson, Miller, Astle, Benson, Brochin, Conway, Currie, DeGrange, Feldman, Guzzone, Kagan, Kasemeyer, Kelley, King, Klausmeier, Lee, Madaleno, Manno, McFadden, Middleton, Muse, Nathan-Pulliam, Oaks, Peters, Pinsky, Ramirez, Robinson, Rosapepe, Smith, Young, and Zucker

Introduced and read first time: February 2, 2018

Assigned to: Executive Nominations

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2018

CHAPTER _____

1 AN ACT concerning

2 **State Vacancy Reform Act**

3 FOR the purpose of altering a certain provision of law to clarify that the Appointments
4 Office in the Office of the Governor is prohibited from taking any action regarding
5 the decision of certain persons to appoint, promote, transfer, reassign, discipline, or
6 terminate certain employees; providing that an individual who was appointed to fill
7 a vacancy in an office during the recess of the Senate or who was nominated to fill a
8 vacancy in an office during a regular session of the Senate ~~is not qualified to serve~~
9 ~~in the office and~~ is prohibited from being nominated for the same office at the same
10 session, unless requested by the Senate, being appointed to the same office during
11 the recess of the Senate, and continuing to serve in the office or being designated to
12 serve in an acting capacity for the same office after a certain time under certain
13 circumstances; prohibiting an individual who is prohibited from continuing to serve
14 in an office under a certain provision of this Act from carrying out the responsibilities
15 of the office in any capacity and making certain representations; ~~providing that any~~
16 ~~action taken by an~~ prohibiting any votes cast by a certain individual who is
17 prohibited from continuing to serve in the office under certain provisions of this Act
18 ~~in violation of a certain provision of this Act is void under certain circumstances~~ from
19 being counted; prohibiting the presence of a certain individual from being counted
20 for a certain purpose; prohibiting an individual who is designated to serve in an
21 acting capacity to fill a vacancy in a certain office from serving in the office for more

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 than a certain number of days; prohibiting a certain individual from serving in an
 2 acting capacity after the adjournment of a regular session of the Senate under
 3 certain circumstances; prohibiting an individual who violates certain provisions of
 4 this Act from receiving any compensation related to serving in the office or carrying
 5 out the responsibilities of the office; providing for the application of certain
 6 provisions of this Act; making this Act an emergency measure; and generally relating
 7 to appointments in State government.

8 BY repealing and reenacting, with amendments,
 9 Article – State Government
 10 Section 8–3A–01
 11 Annotated Code of Maryland
 12 (2014 Replacement Volume and 2017 Supplement)

13 BY adding to
 14 Article – State Government
 15 Section 17–109
 16 Annotated Code of Maryland
 17 (2014 Replacement Volume and 2017 Supplement)

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

20 **Article – State Government**

21 8–3A–01.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) “Appointing authority” has the meaning stated in § 1–101(b) of the
 24 State Personnel and Pensions Article.

25 (3) “Office” means the Appointments Office in the Office of the Governor
 26 that performs the function of recommending to the Governor the appointment or
 27 nomination of an individual to serve as a member of a State or local board, commission,
 28 council, committee, authority, task force, or other entity that by law requires the
 29 membership to be appointed in whole or in part by the Governor, whether or not the
 30 appointment or nomination is with the advice and consent of the Senate or House of
 31 Delegates.

32 (b) The Office may not direct [or], overrule, **OR OTHERWISE TAKE ANY ACTION**
 33 **REGARDING THE DECISION OF** an appointing authority, the Secretary of Budget and
 34 Management, or any unit of the Department of Budget and Management[, on any decision]
 35 to appoint, promote, transfer, reassign, discipline, or terminate an employee under the
 36 jurisdiction of the appointing authority.

1 (c) Only an appointing authority may delegate in writing the authority to act on
2 the appointing authority's behalf, but only to an employee or officer under the jurisdiction
3 of the appointing authority.

4 (d) An appointing authority may not delegate the authority to make the final
5 decision on the termination of an employee.

6 (e) An appointing authority shall notify the Secretary of Budget and Management
7 of any delegation of authority authorized under this section by providing the Secretary a
8 copy of the delegation.

9 **17-109.**

10 **(A) THIS SECTION APPLIES:**

11 **(1) ONLY TO AN OFFICE FOR WHICH AN APPOINTMENT TO FILL A**
12 **VACANCY IS REQUIRED TO BE MADE WITH THE ADVICE AND CONSENT OF THE**
13 **SENATE; AND**

14 **(2) REGARDLESS OF WHETHER A SALARY OR ANY OTHER**
15 **COMPENSATION IS PROVIDED TO THE HOLDER OF THE OFFICE.**

16 **(B) AN INDIVIDUAL WHO WAS APPOINTED TO FILL A VACANCY IN AN OFFICE**
17 **DURING THE RECESS OF THE SENATE OR WHO WAS NOMINATED TO FILL A VACANCY**
18 **IN AN OFFICE DURING A REGULAR SESSION OF THE SENATE ~~IS NOT QUALIFIED TO~~**
19 **~~SERVE IN THE OFFICE AND~~ MAY NOT BE NOMINATED FOR THE SAME OFFICE AT THE**
20 **SAME SESSION, UNLESS REQUESTED BY THE SENATE, BE APPOINTED TO THE SAME**
21 **OFFICE DURING THE RECESS OF THE SENATE, OR CONTINUE TO SERVE IN THE**
22 **OFFICE OR BE DESIGNATED TO SERVE IN AN ACTING CAPACITY FOR THE SAME**
23 **OFFICE AFTER THE ADJOURNMENT OF THE REGULAR SESSION OF THE SENATE AT**
24 **WHICH THE NOMINATION WAS MADE, IF:**

25 **(1) THE GOVERNOR WITHDREW THE NOMINATION DURING THE**
26 **REGULAR SESSION OF THE SENATE AT WHICH THE NOMINATION WAS MADE;**

27 **(2) THE SENATE FAILED TO ACT ON THE NOMINATION BEFORE THE**
28 **SENATE ADJOURNED THE REGULAR SESSION OF THE SENATE AT WHICH THE**
29 **NOMINATION WAS MADE AND THE INDIVIDUAL WAS NOT REAPPOINTED TO THE**
30 **OFFICE BY THE GOVERNOR;**

31 **(3) THE INDIVIDUAL WITHDREW THE INDIVIDUAL'S NOMINATION;**

32 **(4) THE GOVERNOR FAILS TO MAKE THE NOMINATION ON THE FIRST**
33 **DAY OF THE REGULAR SESSION OF THE SENATE IF REQUIRED UNDER ARTICLE II, §**
34 **11 OF THE MARYLAND CONSTITUTION; OR**

1 (5) THE INDIVIDUAL IS NOT CONFIRMED BY THE SENATE AND IS
2 DESIGNATED BY THE GOVERNOR TO FILL THE VACANCY IN AN ACTING CAPACITY.

3 (C) AN INDIVIDUAL WHO IS PROHIBITED FROM CONTINUING TO SERVE IN
4 AN OFFICE UNDER SUBSECTION (B) OF THIS SECTION MAY NOT:

5 (1) CARRY OUT THE RESPONSIBILITIES OF THE OFFICE IN ANY
6 CAPACITY; OR

7 (2) MAKE REPRESENTATIONS THAT THE INDIVIDUAL:

8 (I) SERVES IN THE OFFICE IN ANY CAPACITY; OR

9 (II) IS LEGALLY AUTHORIZED TO CARRY OUT THE
10 RESPONSIBILITIES OF THE OFFICE IN ANY CAPACITY.

11 (D) IF THE HOLDER OF THE IS IN AN OFFICE IS NOT PROVIDED A ON A
12 PUBLIC BODY FOR WHICH NO SALARY IS PROVIDED, ANY ACTION TAKEN;

13 (1) ANY VOTES CAST BY AN INDIVIDUAL WHO, AT THE TIME THE VOTE
14 IS CONDUCTED BY THE PUBLIC BODY, IS PROHIBITED FROM CONTINUING TO SERVE
15 IN THE OFFICE UNDER SUBSECTION (B) OF THIS SECTION IN VIOLATING SUBSECTION
16 (C)(1) OF THIS SECTION IS VOID MAY NOT BE COUNTED; AND

17 (2) THE PRESENCE OF AN INDIVIDUAL DESCRIBED IN ITEM (1) OF
18 THIS SUBSECTION MAY NOT BE COUNTED FOR PURPOSES OF A QUORUM.

19 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN
20 INDIVIDUAL WHO IS DESIGNATED TO SERVE IN AN ACTING CAPACITY TO FILL A
21 VACANCY IN AN OFFICE FOR WHICH AN APPOINTMENT IS REQUIRED TO BE MADE
22 WITH THE ADVICE AND CONSENT OF THE SENATE MAY NOT SERVE IN THE OFFICE
23 FOR MORE THAN 275 DAYS AFTER THE DATE THE DESIGNATION WAS MADE.

24 (2) AN INDIVIDUAL MAY NOT CONTINUE TO SERVE IN AN ACTING
25 CAPACITY AFTER THE ADJOURNMENT OF A REGULAR SESSION OF THE SENATE IF:

26 (I) THE INDIVIDUAL WAS SERVING IN THE ACTING CAPACITY
27 BEFORE THE START OF THE REGULAR SESSION; AND

28 (II) THE INDIVIDUAL WAS NOT NOMINATED TO FILL THE
29 VACANCY IN THE OFFICE DURING THAT REGULAR SESSION.

1 ~~(E)~~ **(F)** **AN INDIVIDUAL WHO VIOLATES THIS SECTION MAY NOT RECEIVE**
2 **ANY COMPENSATION, INCLUDING A SALARY OR REIMBURSEMENT FOR EXPENSES**
3 **OUT OF THE STATE BUDGET, RELATED TO SERVING IN THE OFFICE OR CARRYING**
4 **OUT THE RESPONSIBILITIES OF THE OFFICE.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
6 measure, is necessary for the immediate preservation of the public health or safety, has
7 been passed by a yea and nay vote supported by three-fifths of all the members elected to
8 each of the two Houses of the General Assembly, and shall take effect from the date it is
9 enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.