

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 687

(Senator Ferguson, *et al.*)

Executive Nominations

Appropriations

State Vacancy Reform Act

This emergency bill specifies that an individual who was appointed to fill a vacancy in an office subject to Senate confirmation during the recess of the Senate or who was nominated to fill a vacancy in an office during a regular session of the Senate may not (1) be nominated for the same office at the same session, unless requested by the Senate; (2) be appointed to the same office during the recess of the Senate; or (3) continue to serve in the office or be designated to serve in an acting capacity for the same office after the adjournment of the regular session of the Senate at which the nomination is made under specified circumstances.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill does not directly affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill's provisions apply only to an office for which an appointment to fill a vacancy is required to be made with the advice and consent of the Senate and regardless of whether a salary or any other compensation is provided to the holder of the office. They apply to an individual appointed to fill a vacancy in an office during the recess of the Senate or who was nominated to fill a vacancy in an office during a regular session of the Senate if (1) the Governor withdrew the nomination during the regular session of the Senate at which the nomination was made; (2) the Senate failed to act on the nomination

before the Senate adjourned the regular session at which the nomination was made and the individual was not reappointed to the office by the Governor; (3) the individual withdrew the individual's nomination; (4) the Governor fails to make the nomination on the first day of the regular session if required to do so; or (5) the individual is not confirmed by the Senate and is designated by the Governor to fill the vacancy in an acting capacity.

An individual who is prohibited from continuing to serve under the conditions specified above may not, in any capacity, carry out responsibilities of the office or make representations that the individual serves in the office or is legally authorized to carry out the responsibilities of the office. If the holder is in an office on a public body for which no salary is provided, any votes cast by an individual who, at the time the vote is conducted by the public body, is prohibited from continuing to serve in the office under the provisions specified above may not be counted. The presence of the individual may also not be counted for purposes of a quorum.

An individual who is designated to serve in an acting capacity to fill a vacancy in an office for which an appointment is required to be made with the advice and consent of the Senate may not serve in the office for more than 275 days after the date the designation was made. An individual may not continue to serve in an acting capacity after the adjournment of a regular session of the Senate if (1) the individual was serving in the acting capacity before the start of the regular session and (2) the individual was not nominated to fill the vacancy in the office during that regular session.

In addition, the individual may not receive any compensation, including a salary or reimbursement for expenses, related to serving in the office or carrying out the responsibilities of the office.

The bill also clarifies that the Appointments Office in the Office of the Governor may not take *any* action regarding the decision of an appointing authority, the Secretary of Budget and Management, or any unit of the Department of Budget and Management (DBM) to appoint, promote, transfer, reassign, discipline, or terminate an employee under the jurisdiction of the appointing authority.

Current Law/Background: Numerous offices, including those of cabinet secretaries and various boards and commissions, are appointed by the Governor with the advice and consent of the Senate. The process is facilitated by the Senate Executive Nominations Committee (committee), which was formed in 1845. For all appointments made by the Governor that require Senate advice and consent, the committee reviews and interviews appointees, then reports its recommendations on the nominations to the Senate. In case of any vacancy during the recess of the Senate, in any office for which the Governor has the power to fill, the Governor must appoint a suitable person to the office who continues to serve until the end of the next session of the General Assembly or until another person is

appointed to the same office, whichever occurs first. The nomination of the person appointed during the recess, or of some other person, is made to the Senate on the first day of the next regular meeting of the Senate. No person, after being rejected by the Senate, may again be nominated for the same office at the same session, unless at the request of the Senate, or be appointed to the same office during the recess of the General Assembly.

During the 2017 session, the full Senate did not vote on the nominations of two cabinet secretaries. In both instances, the names were withdrawn prior to a full vote. Chapter 150 (the fiscal 2018 budget bill) included language prohibiting funds from being used to pay the salary of a Secretary or an Acting Secretary of any department whose nomination as Secretary has been rejected by the Senate or an Acting Secretary who was serving in that capacity prior to the 2017 session whose nomination was not put forward and approved by the Senate during the 2017 session unless the Acting Secretary is appointed under specified provisions of the Maryland Constitution prior to July 1, 2017.

Chapter 150 further prohibits funds from being used to pay the salary of a Secretary or Acting Secretary of any department who was a recess appointment in 2016 and whose nomination was put forward and not acted upon by the committee or whose nomination was rejected by the committee and whose nomination was withdrawn before the full Senate acted. No funds may be expended to pay the salary of an Assistant Secretary or Deputy Secretary who was a recess appointment as Secretary in 2016 and whose nomination was rejected by the committee and withdrawn before the full Senate acted or whose nomination was not acted upon by the committee. The language may not be construed to prohibit employment in State government not serving in a leadership capacity, as specified.

After the adjournment of session, the Governor reappointed the two individuals. Litigation regarding the appointments and the budget language is ongoing.

The Appointments Office in the Office of the Governor performs the function of recommending to the Governor the appointment or nomination of an individual to serve as a member of a State or local board or any other entity that, by law, requires the membership to be appointed in whole or in part by the Governor, whether or not the appointment or nomination is with the advice and consent of the Senate or the House of Delegates. The Appointments Office may not direct or overrule an appointing authority, the Secretary of Budget and Management, or any unit of DBM on any decision to appoint, promote, transfer, reassign, discipline, or terminate an employee under the jurisdiction of the appointing authority.

Additional Information

Prior Introductions: None.

Cross File: HB 422 (Delegate A. Miller, *et al.*) - Appropriations.

Information Source(s): Governor's Office; Department of Budget and Management; Maryland State Archives; *Baltimore Sun*; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2018
mm/mcr Third Reader - March 14, 2018
Revised - Amendment(s) - March 14, 2018

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510