

Department of Legislative Services  
 Maryland General Assembly  
 2018 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 338  
 Finance

(Senator Feldman, *et al.*)

Rules and Executive Nominations

State Personnel – Grievance Procedures

This bill expands application of State employee grievance proceedings to include a dispute between an employee and the employee’s employer about the interpretation and application of any term or condition of a memorandum of understanding (MOU) between the State and the exclusive representative. The State employee grievance proceedings apply to independent personnel systems, except for the Maryland Department of Transportation (MDOT). Even so, the Secretary of Transportation must adopt regulations that address procedures for redressing of grievances, under the broader application of “grievance” in the bill.

Fiscal Summary

**State Effect:** General fund and Transportation Trust Fund (TTF) expenditures increase by \$1.0 million in FY 2019 for State agencies to resolve a higher volume of grievances and refer more cases to the Office of Administrative Hearings (OAH). Thus, reimbursable fund revenues for OAH increase by \$377,200 in FY 2019 and reimbursable fund expenditures increase by \$93,600. Out-years reflect annualization and elimination of one-time costs.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
ReimB. Rev.	\$377,200	\$502,900	\$502,900	\$502,900	\$502,900
GF Expenditure	\$902,600	\$1,148,300	\$1,168,500	\$1,193,600	\$1,219,600
SF Expenditure	\$145,100	\$181,300	\$185,500	\$190,800	\$196,300
ReimB. Exp.	\$93,600	\$106,600	\$109,900	\$113,700	\$117,700
Net Effect	(\$764,200)	(\$933,300)	(\$961,100)	(\$995,200)	(\$1,030,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** None.

**Small Business Effect:** None.

## **Analysis**

**Bill Summary:** An employee in the State Personnel Management System (SPMS) who is subject to a collective bargaining agreement that contains another grievance procedure is no longer excluded from participating in grievance proceedings. The grievant must complete specified forms in sufficient detail that will allow for the expeditious resolution of the grievance.

### **Current Law:**

#### *State Personnel Management System Grievance Procedures*

Subject to specified exemptions, any employee in SPMS may file a grievance. A grievance is a dispute between an employee and the employee's employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the Secretary of Budget and Management or (2) any other policy or regulation over which management has control. Grievances are not disputes about pay grades, the timing or amount of statewide pay increases, or other specified items.

Resolution of a grievance is a three-step process consisting of (1) initiation of the grievance; (2) an appeal to the head of the principal unit; and (3) an appeal to the Secretary of Budget and Management. If the Secretary does not resolve the grievance, it is referred to OAH for a final administrative decision.

#### *State Employees and Collective Bargaining*

Approximately 30,000 State employees have collective bargaining rights. Maryland's collective bargaining law generally applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery and Gaming Control Agency, University System of Maryland, the Office of the Comptroller, the Maryland Transportation Authority who are not police officers, the State Retirement Agency, the Maryland State Department of Education, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College, along with specified firefighters for the Martin State Airport and all full-time Maryland Transportation Authority police officers at the rank of first sergeant and below.

Certain Executive Branch employees within the State do not have these rights, such as elected government officials; political appointees or employees by special appointment; or any supervisory, managerial, or confidential employees of an Executive Branch department.

Parties to the collective bargaining process must make every reasonable effort to conclude their negotiations by January 1 for any item requiring appropriation for the fiscal year that begins the following July 1. If the parties do not conclude negotiations for the next fiscal year before October 25, either party may request that a neutral fact finder be employed to resolve the issues. By November 20, the fact finder must make written recommendations regarding wages, hours, and working conditions and any other terms or conditions of employment that may be in dispute. Those recommendations must be delivered to the specified parties by December 1, but they are not binding. The outcome of collective bargaining must be incorporated into an MOU.

### *Maryland Department of Transportation Grievance Procedures*

Generally, MDOT employees may file a grievance in writing within 30 days of the alleged cause of complaint or knowledge of the complaint. A grievance is a cause of complaint arising between a Transportation Service employee and MDOT over the interpretation and application of MDOT regulations, rules, or policies over which management has control.

Resolution of a grievance is a three-step process consisting of (1) initiation of the grievance in writing to the employee's appointing authority or the appointing authority's designee; (2) an appeal to the Secretary of Transportation or the Secretary's designee; and (3) an appeal to OAH for a final administrative decision, or the employee may elect to submit the grievance complaint to outside arbitration through the Secretary of Transportation.

**Background:** In fiscal 2017, there were 481 grievances forwarded to the Department of Budget and Management (DBM), of which 124 grievances were forwarded to OAH; the rest were resolved by DBM.

Disputes between an exclusive representative and an employer regarding the terms and conditions of an MOU are currently resolved through a fact finder, who acts as an arbitrator. This process is used sparingly, in part because the costs of using a fact finder are shared equally between the exclusive representative and the employer. By contrast, the State bears the cost of grievance procedures.

**State Fiscal Effect:** The University System of Maryland, St. Mary's College of Maryland, Morgan State University, and Baltimore City Community College can likely handle any increase in grievances with existing resources.

DBM and MDOT each expect a substantial increase in the number of additional grievances as a result of expanding the definition of a grievance. The bill allows employees to file grievances on disputes about the interpretation of provisions in an MOU, which include paid release time for union activities; access to State facilities; union activity during

working hours; State-provided meeting space, office supplies, and bulletin boards; access to State mail service and State email systems; distribution of union information in the workplace; access to new employees individually and during State-organized formal orientations; State-provided union office space; and general release-from-duty provisions. DBM and MDOT anticipate many grievances to arise, especially from employers denying requested leave to attend union events.

In addition, both agencies expect employees to use the grievance process, instead of exclusive representatives using a fact finder, as a result of the cost savings to unions and the comparative ease of the grievance process.

A portion of the substantial increase in grievances will be forwarded to OAH for an administrative hearing. DBM anticipates significantly more of its grievances being forwarded to OAH, based on the current proportion of cases that it is unable to resolve, and MDOT expects an additional 11 cases to be forwarded to OAH. The Department of Legislative Services concurs with these estimates. Due to the volume and complexity of the anticipated increase in grievances, OAH will need an administrative law judge to handle the increased caseload.

*Personnel Costs*

General fund, TTF, and reimbursable fund expenditures increase by a combined \$764,187 for personnel-related expenditures in fiscal 2019, which accounts for the bill’s October 1, 2018 effective date. To process the anticipated increase in grievances, this estimate reflects the cost of hiring one administrative law judge within OAH, two human resource analysts within DBM, one employee relations officer within the Department of Juvenile Services, and two employee relations officers within each of the following agencies: MDOT; the Maryland Department of Health; the Department of Public Safety and Correctional Services; and the Department of Human Services. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	12.0
Salaries and Fringe Benefits	\$684,440
One-time Start-up Costs	67,556
Operating Expenses	<u>12,191</u>
<b>Total FY 2019 State Expenditures</b>	<b>\$764,187</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

### *Charges for Referral of Cases to the Office of Administrative Hearings*

Additionally, there are charges associated with referring cases to OAH. Agencies pay OAH on a per-case basis to cover the costs associated with adjudication. The current fee is \$3,421 per case. Based on an increase of 147 cases being referred to OAH, fiscal 2019 TTF expenditures are estimated to increase by almost \$28,200 (\$37,600 on an annualized basis), and fiscal 2019 general fund expenditures are estimated to increase by almost \$349,000 (\$465,300 on an annualized basis); OAH reimbursable fund revenues increase correspondingly.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 491 of 2017, received a hearing in the House Appropriations Committee and was subsequently withdrawn. Its cross file, SB 446, received a hearing in the Senate Finance Committee, but no further action was taken.

**Cross File:** HB 335 (Delegate Haynes, *et al.*) - Appropriations.

**Information Source(s):** Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Budget and Management; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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