

**Department of Legislative Services**  
 Maryland General Assembly  
 2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 388 (Senator Benson, *et al.*)  
 Finance and Judicial Proceedings

**Circuit Courts and District Court of Maryland Employees - Collective Bargaining**

The bill establishes collective bargaining rights for specified employees of the circuit courts and the District Court. The bill also establishes the State Judicial Employees Labor Relations Board as an independent unit of State Government and establishes duties for the board. **The bill takes effect July 1, 2020.**

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$420,500 in FY 2021. Future year expenditures reflect annualization and inflation. In addition, personnel expenditures may increase as a result of collective bargaining. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	420,500	509,700	521,100	537,600	554,600
Net Effect	(\$420,500)	(\$509,700)	(\$521,100)	(\$537,600)	(\$554,600)

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

**Local Effect:** Circuit court expenditures may increase depending on future collective bargaining agreements. The circuit court for Anne Arundel County can likely implement the bill with existing resources.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill establishes that clerical, administrative constabulary, and maintenance and housekeeping employees of the circuit courts and the District Court have the right to (1) self organization; (2) bargain collectively through an employee organization that is an exclusive representative of the employees' own choosing; and (3) engage in, or refrain from engaging in, other concerted activities for the purpose of collective bargaining or mutual aid or protection.

The bill establishes membership requirements for the State Judicial Employees Labor Relations Board and procedures for filling vacancies and the removal of members. The board must elect a chair from among its members. The term of a member is five years. The bill establishes expiration dates for the terms of the initial members of the board. Board members are entitled to compensation provided in the State budget and reimbursement for expenses. The board must appoint an executive director, who is responsible to and serves at the pleasure of the board. The executive director is entitled to the salary provided in the State budget and may hire any necessary staff. With approval of the board, the executive director may employ professional consultants.

The board is responsible for administering and enforcing provisions relating to collective bargaining and must recognize one statewide bargaining unit comprising all clerical, administrative constabulary, and maintenance and housekeeping employees of the circuit courts and the District Court. The board must adopt regulations that establish guidelines for establishing a bargaining unit that take into consideration specified items, including the desires of the employees involved; the wages, hours, and other working conditions of the employees involved; and the administrative structures of the District Court as an employer. The regulations must also establish procedures that are consistent with specified requirements in the State Personnel and Pensions Article for the determination of questions relating to representation.

The board must (1) investigate and take appropriate action in response to complaints of unfair labor practices and lockouts; (2) investigate any alleged violations relating to the bill's provisions or associated regulations; and (3) investigate any other relevant matter. The board may hold a hearing in accordance with the Administrative Procedure Act whenever necessary for a fair determination of any related issue or complaint. If a person fails to comply with an order issued by the board, a person aggrieved, a member of the board, or the board in its own name may petition the circuit court for Anne Arundel County to order the person to comply with the board's order. The board may not be required to post bond.

All employees covered by the bill are subject to statutory provisions regarding the rights of employees, prohibitions against engaging in any strike, and the authority for an

employee organization to petition the circuit court for appropriate relief, including injunction, in specified circumstances. The District Court, the Chief Judge of the District Court, and the Administrative Office of the Courts are subject to statutory provisions which (1) give the State various rights involving employee decisions and operations; (2) prohibit the State from engaging in any lockout; and (3) authorize the State to petition the circuit court for appropriate relief, including injunction, if a strike occurs or appears imminent. Statutory provisions relating to unfair labor practices are also extended to the District Court, the Chief Judge of the District Court, the Administrative Office of the Courts, and the exclusive representative for covered employees.

An employee organization certified as the exclusive representative must (1) serve as the sole and exclusive bargaining agent for all employees in the bargaining unit; (2) represent fairly and without discrimination all employees in the bargaining unit; and (3) promptly file with the board all changes and amendments to the organization's governing documents. The obligation of the parties to engage in collective bargaining must begin on certification of an exclusive representative and include negotiation over the terms of a memorandum of understanding (MOU).

If the parties do not conclude negotiations for the next fiscal year before October 25, on demand of the Chief Judge of the District Court, the Administrative Office of the Courts, or the exclusive representative, the board must conduct a hearing or authorize an arbitrator admitted to the National Academy of Arbitrators to conduct a hearing. The hearing's purpose is to conduct fact-finding to resolve the major issues in dispute and issue a written statement of findings and recommendations as to appropriate terms and conditions of employment.

Collective bargaining must include all matters relating to wages, hours, and other terms and conditions of employment. Collective bargaining may include negotiations relating to the right of an employee organization to receive service fees from nonmembers consistent with statutory provisions. However, the District Court, the circuit courts, and the exclusive representative may not be required to negotiate over any matter that is inconsistent with applicable law and may negotiate and reach agreement with regard to a matter that is inconsistent with applicable law only if it is understood that the agreement with respect to the matter cannot become effective unless the applicable law is amended by the General Assembly.

Negotiations must conclude with an MOU that covers all matters of agreement reached in the collective bargaining process. The MOU is not valid if it extends for less than one year or more than three years. The bill specifies the ratification process of the MOU.

## **Current Law/Background:**

### *Collective Bargaining Generally*

Approximately 28,682 State employees, excluding higher education employees, were covered by collective bargaining rights as of December 2019. 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, the 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.

Judicial and Legislative branch personnel, in addition to specified 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.

Exclusive employee representatives must represent fairly and without discrimination all employees in a bargaining unit, whether or not they are members of the organization. They may negotiate all matters related to wages, hours, and other terms and conditions of employment, and the time and manner of access to a new employee program.

The State Labor Relations Board is a five-member independent unit of State government responsible for administering and enforcing the State's collective bargaining law, particularly the establishment of new collective bargaining units and the certification of exclusive employee representatives for those units. In that capacity, the board holds elections for exclusive employee representatives when petitioned to do so and also adjudicates dispute resolution cases related to the collective bargaining process. The State Higher Education Labor Relations Board is responsible for enforcing collective bargaining laws with respect to employees of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College.

### *State Employees and Service Fees*

State law authorizes collective bargaining with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization generally must pay the service fee if a fee is successfully negotiated. Likewise, employees who are dues-paying members of an employee organization that is

not the exclusive representative must also pay any negotiated service fee. Employees may not be required to pay a service fee due to specified religious objections, but instead they must pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization.

However, the U.S. Supreme Court reversed its position in 2018 on the right of a public-sector exclusive representative to collect service fees from nonunion members. In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the U.S. Supreme Court found that, while an exclusive representative could collect a fee from nonunion members, the fee revenues could not be used to support ideological causes not germane to the organization's duties as the collective bargaining representative. In 2017, the U.S. Supreme Court ruled in *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. \_\_\_ (2018) that the state's collection of agency fees from nonconsenting public employees was a violation of the First Amendment and *Abood* is, therefore, overruled. States and public-sector unions may no longer collect agency fees from nonconsenting employees. Consequently, Maryland no longer collects service fees from nonunion members.

POLITICO studied the nationwide impact of the *Janus* court case by reviewing 10 large public-employee unions. It found that those unions lost 309,612 fee payers in 2018. However, all but 1 reported more money at the end of 2018, and membership was up in those unions by 132,312 members. In states without right-to-work laws, the percent of public employees represented by a union decreased by 1.0 percentage point and public unions in those states lost union coverage for 115,625 employees.

**State Fiscal Effect:** General fund expenditures increase by \$420,487 in fiscal 2021, which reflects the July 1, 2020 effective date and assumes a 90-day start-up delay. Conversely, the response of the Judiciary requested more than \$4.75 million for implementation of the bill. The Department of Legislative Services disagrees with the Judiciary's assessment.

This estimate reflects the cost of hiring one executive director, one attorney, and one administrative assistant to staff the newly created State Judicial Employees Labor Relations Board and administer the collective bargaining process. It also reflects the cost of hiring of two labor relations specialists within the Administrative Office of the Courts to handle, among other issues, the negotiation of special circumstances affecting the courts that will inevitably arise as both management and employees adjust to collective bargaining procedures. It includes salaries, fringe benefits, one-time start-up costs, and operating expenses (including costs for board member per diems and mailings to impacted employees).

Positions	5
Salaries and Fringe Benefits	\$361,781
Operating Expenses	<u>58,706</u>
<b>Total FY 2021 State Expenditures</b>	<b>\$420,487</b>

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

*Future Personnel Costs*

The Judiciary did not provide information regarding the number of employees who would be impacted by the collective bargaining process, but it estimated additional personnel expenditures of \$2.0 million annually, assuming collective bargaining increases salary and salary-driven fringe benefits costs by 1% to 1.5% annually. Because these future personnel expenditures are speculative, these potential expenditures are not included in the above estimate.

**Additional Information**

**Prior Introductions:** SB 824 of 2014, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 1292, passed the House with amendments and received a hearing in the Senate Finance Committee, but no further action was taken.

**Designated Cross File:** HB 1134 (Delegate P. Young, *et al.*) - Appropriations.

**Information Source(s):** Baltimore City; Howard and Prince George’s counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2020  
an/lgc

Analysis by: Heather N. MacDonagh

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