

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1277
 Appropriations

(Delegate Henson)

Finance

State Personnel Management System – Office of the Public Defender – Placement

This bill establishes that the deputy public defender, district public defenders, and assistant public defenders within the Office of the Public Defender (OPD) are in the executive service, management service, and professional service of the State Personnel Management System (SPMS), respectively. The bill further establishes that all other employees of OPD are in the executive, management, professional, or skilled service of SPMS; employees in the professional or skilled service may be terminated or otherwise disciplined only for cause. Additionally, the bill makes attorneys in OPD subject to specified State employee grievance procedures (from which they are currently excluded in current law). By January 1, 2022, the Public Defender must assign each appointee or employee of OPD to the appropriate employment category in accordance with the bill.

Fiscal Summary

State Effect: General fund expenditures increase by \$138,600 in FY 2022 to manage the increased human resources workload; out-year expenditures reflect annualization and elimination of one-time costs. General fund expenditures increase further to the extent that employee grievances are referred to the Office of Administrative Hearings (OAH); reimbursable revenues and expenditures increase accordingly.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
ReimB. Rev.	-	-	-	-	-
GF Expenditure	\$138,600	\$163,300	\$168,200	\$174,300	\$180,500
ReimB. Exp.	-	-	-	-	-
Net Effect	(\$138,600)	(\$163,300)	(\$168,200)	(\$174,300)	(\$180,500)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: With the approval of the Board of Trustees of OPD, the Public Defender appoints a deputy public defender and one district public defender for each district of the District Court. The deputy public defender and district public defenders must have the same qualifications as the Public Defender; thus, they must be attorneys admitted to practice law in the State and have engaged in the practice of law for at least five years before appointment. With the advice of the district public defenders, the Public Defender may appoint assistant public defenders in accordance with the State budget. To qualify for appointment as an assistant public defender, an individual must be an attorney admitted to practice law in the State.

The deputy public defender, district public defenders, and assistant public defenders serve at the pleasure of the Public Defender and may not engage in the private practice of criminal law.

The Public Defender must also appoint investigators, stenographic assistants, clerical assistants, and other personnel as may be required to assist the Public Defender and district public defenders to perform the duties of OPD in accordance with the State budget.

Employment Categories in the State Personnel Management System

SPMS has four major employment categories designated in statute:

- executive service, which consists of chief administrators of principal units or comparable positions, including deputy secretaries or assistant secretaries;
- management service, which consists of positions that involve direct responsibility for the oversight and management of personnel and financial resources and that require the exercise of discretion and independent judgment;
- professional service, which consists of positions that require advanced knowledge in a field of science or learning and that normally require a professional license, advanced degree, or both; and
- skilled service, which consists of all other positions.

Classification of skilled, professional, management, and executive service positions in SPMS is the responsibility of the Secretary of Budget and Management. The Secretary must likewise establish the standards and procedures used to classify positions in the skilled, professional, management, and executive services and provide advice and guidance on their use.

The head of a principal unit may classify positions in the unit, in accordance with the Secretary of Budget and Management's established standards and procedures, if the Secretary chooses to delegate the classification authority. If the Secretary delegates the classification authority to the head of a principal unit, that person must prepare a position classification plan for the Secretary's approval and classify all positions in accordance with the approved plan. The Secretary must conduct a position classification audit at least once every three years but only if the classification activity was delegated to the head of a principal unit. The Secretary may conduct operational audits of classification practices and records in principal units once every three years.

A temporary employee is not classified in the skilled, professional, management, or executive service in SPMS.

Special Appointments

Special appointments within SPMS are employees who:

- are appointed directly by the Governor to a position that is not provided for in the State Constitution;
- are appointed directly by the Board of Public Works;
- as determined by the Secretary of Budget and Management, perform a significant policy role or provide direct support to a member of the executive service;
- are assigned to the Government House (the Governor's residence);
- are assigned to the Governor's office; or
- are in positions specified by law to be special appointments.

Special appointments are the only positions in the Executive Branch that may be filled with regard to political affiliation, but most are not. Positions that may be filled with regard to political affiliation must be so designated and disclosed to the appointee.

State Employee Grievance Procedures

Title 12 of the State Personnel and Pensions Article establishes grievance procedures that apply to State employees in SPMS within the Executive Branch and independent personnel systems, subject to specified exemptions. Title 12 does not apply to attorneys in OPD.

Any employee covered by Title 12 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; (2) any other policy or regulation over which management has control; or (3) any term or condition of a memorandum of understanding between the State and the

exclusive representative. A grievance is not a dispute about a pay grade or range for a class; the amount or effective date of statewide pay increase; the establishment of a class or assignment of a class to a service category; the establishment of classification standards; a mid-year performance appraisal; or an oral reprimand or counseling.

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. Any costs incurred by OAH for the appeal of a grievance to OAH must be paid by the principal unit that employs the grievant.

State Fiscal Effect: The Department of Budget and Management (DBM) advises that the deputy public defender position is currently classified in the executive service, and district public defenders are classified in the management service. Thus, the bill codifies existing practice with respect to these positions.

Assistant public defender positions are currently appointed positions in the professional service but are designated as special appointments, which makes them at-will positions. In addition, DBM advises that certain other OPD positions in the professional and skilled services are also designated as special appointments. Thus, these positions are subject to reclassification under the bill. OPD advises that there are currently 558.5 full-time equivalent assistant public defender positions; thus, it is estimated that at least this number of positions are affected.

It is assumed that employee relations activities will increase based on the change in employee status for assistant public defenders and other affected positions. For example, these employees can only be dismissed for cause and will have more rights to appeal a disciplinary action, including dismissals. Thus, additional human resources personnel are needed to assist with the reclassification process, investigate employee grievances, and oversee appeals.

Accordingly, general fund expenditures for OPD increase by \$138,583 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring two additional human resources staff to manage the increased workload described above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$127,420
Operating Expenses	<u>11,163</u>
Total FY 2022 State Expenditures	\$138,583

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

General fund expenditures for OPD increase further to the extent that employee grievances are referred to OAH. Reimbursable revenues and expenditures for OAH increase accordingly. Agencies pay OAH on a per-case basis to cover the costs associated with adjudication; in fiscal 2020, the fee was approximately \$3,600 per case. The number of cases referred to OAH annually as a result of the bill cannot be reliably estimated but is not expected to be significant.

Additional Comments: The bill requires current personnel at OPD to be reclassified by January 1, 2022. However, DBM advises that typically, current at-will employees, which includes all current assistant public defenders, cannot be converted to professional service positions in SPMS if they were not hired in a merit-protected position through a competitive process specified in statute. Thus, it is not clear if OPD can reclassify positions held by existing employees. If not, those positions can only be reclassified when they become vacant.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 757 (Senator Carter) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Budget and Management; State Retirement Agency; Office of Administrative Hearings; WYPR.org; Department of Legislative Services

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