Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 260 (Delegate Chang)
Appropriations Finance

State Personnel - Collective Bargaining - Supervisory Employees

This bill repeals the statutory exclusion from collective bargaining for most supervisory State employees in Executive Branch agencies, excluding higher education institutions, thereby establishing collective bargaining rights for those employees. Eligible supervisory employees must be defined by regulations, adopted by the Secretary of Budget and Management, and are subject to the Maryland Public Employee Relations Act. Generally, supervisory employees must have a separate bargaining unit. Additionally, the bill excludes managerial or confidential employees of the Office of the Public Defender (OPD) from collective bargaining.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* $86,500 in FY 2025, as discussed below; future years reflect annualization, inflation, and ongoing costs. State expenditures (all funds) may increase beginning in FY 2025 for additional human resources/labor relations employees within State agencies and increase further, potentially significantly, likely beginning in FY 2026 to the extent collective bargaining negotiations result in additional rights, benefits, or compensation for affected employees, as discussed below. Any such impact (or any resultant impact on revenues) cannot be reliably estimated or predicted and is not shown below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	$0	$0	$0	$0	$0
GF Expenditure	86,500	103,700	108,300	113,000	118,000
Net Effect	($86,500)	($103,700)	($108,300)	($113,000)	($118,000)

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

Local Effect: The bill does not affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

State Employees and Collective Bargaining

Title 3 of the State Personnel and Pensions Article establishes statutory collective bargaining rights for a large number of State employees. Employees, employers, and exclusive representatives subject to Title 3 are also subject to the provisions of the Maryland Public Employee Relations Act.

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 (USM), the Office of the Comptroller, the Maryland Transportation Authority (MDTA) (for those who are not police officers), the State Retirement Agency, the Maryland State Department of Education, the Maryland Environmental Service, the Maryland School for the Deaf (MSD), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC), along with specified firefighters for the Martin State Airport and all full-time MDTA police officers at the rank of first sergeant and below. Chapter 46 of 2022 applied the State's collective bargaining laws to employees of OPD as well, but it did not specifically exclude supervisory, managerial, or confidential employees of OPD from collective bargaining.

The State's collective bargaining law does not apply to:

- Maryland Transit Administration employees;
- Legislative and Judicial Branch personnel;
- elected and appointed officials;
- the Governor's and Lieutenant Governor's staff;
- an employee assigned to, or with access to records of, the Public Employee Relations Board (PERB);
- special appointees and executive service personnel in the State Personnel Management System (SPMS);
- senior administrators, faculty members, student employees, and other designated employees of USM, MSU, SMCM, or BCCC;
- the chief, deputy, or assistant administrator of a unit with an independent personnel system;
- temporary or contractual employees in SPMS;

- temporary, contractual, or emergency employees in a unit of the Executive Branch with an independent personnel system;
- an employee who is entitled to participate in collective bargaining under another law;
- an employee whose participation in a labor organization is contrary to the State's ethics laws; and
- any supervisory, managerial, or confidential employee as defined by regulation.

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. The Governor must include in the annual budget bill submitted to the General Assembly any amounts in the budgets of the principal units required to accommodate any additional cost resulting from the negotiations for the fiscal year beginning the following July 1, if the legislative changes have been negotiated to become effective in that fiscal year.

Rights of Employees

Employees subject to the State's collective bargaining law have the right to (1) take part or refrain from taking part in forming, joining, supporting, or participating in any employee organization or its lawful activities; (2) be fairly represented by their exclusive representative, if any, in collective bargaining; and (3) generally, engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Public Employee Relations Board and Bargaining Units

The Public Employee Relations Act of 2023 established PERB, which oversees collective bargaining activities for certain public employees in Maryland. The Act repealed the State Labor Relations Board, the State Higher Education Labor Relations Board, and the Public School Labor Relations Board, consolidating their duties under PERB. PERB is a five-member independent unit of State government responsible for administering and enforcing the State's collective bargaining law (the Maryland Public Employee Relations Act), 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 adjudicates dispute resolution cases related to the collective bargaining process.

Each institution of higher education must have a separate bargaining unit, and for these institutions, appropriate bargaining units must consist of (1) all eligible nonexempt employees except sworn police officers; (2) all eligible exempt employees; and (3) all eligible sworn police officers. Additionally, MDTA police officers at the rank of first sergeant and below must have a separate bargaining unit, and faculty at MSD must have a separate bargaining unit.

Generally, the Secretary of Budget and Management has the authority to assign classification titles and positions to bargaining units as appropriate.

State Expenditures:

Public Employee Relations Board

If a petition is filed to form a union or unions, PERB must determine appropriate unit members and either run an election, or, depending on the showing of interest, certify a particular union as the bargaining unit representative. PERB incurs postage expenses to mail ballots, and, to the extent on-site elections are necessary, PERB may incur travel and other administrative expenses. Thus, general fund expenditures for PERB increase minimally to hold elections, if warranted, to determine whether affected employees will be represented by a particular union for collective bargaining purposes.

Once an election process is concluded and the petitioning union is successful, the collective bargaining process begins. PERB advises that most disputes between parties occur in the first three years of the collective bargaining relationship, so PERB may experience an increase in filings of unfair labor practice charges, impasse claims, or negotiability disputes. Additionally, PERB receives reimbursable funds from public higher education institutions based on the percentage of work time PERB employees spend on those institutions. Thus, to the extent that PERB employees spend more time on collective bargaining matters or processing cases for State agencies/State employees/exclusive representatives as a result of the bill and less time on those same matters or cases for public higher education institutions (and/or their employees/exclusive representatives), reimbursable expenditures decrease and general fund expenditures increase.

Collective Bargaining Costs for State Agencies

The bill increases State expenditures (all funds) in two ways if a union is formed for a bargaining unit. First, adding more bargaining units may increase the workload of human resources/labor relations units within State agencies to respond to additional union matters, such as inquiries on memoranda of understanding, grievances, performance management, and other labor matters. Collective bargaining of supervisors may create conflicts of interest when participating in decision making and personnel actions, such as the disciplinary process of employees, thereby making some processes more complex. Thus, to the extent the additional workload within human resources/labor relations units increases, additional staff may be needed. While several agencies anticipate needing one additional human resources/employee relations employee, others estimate needing even more. For example, the Department of Public Safety and Correctional Services anticipates needing four additional employees to handle the additional grievances, appeals, administration, and advocacy stemming from supervisors joining a union. The Department of Legislative Services notes, however, that the extent to which the workloads of human resources/employee relations functions increase as a result of the bill cannot be reliably predicted, as it depends on whether supervisors elect to participate in collective bargaining and the demands of the unions, among other factors. To the extent that additional personnel are needed to manage increased responsibilities under the bill, expenditures (all funds) increase beginning as early as fiscal 2025 if a petitioning union is successful.

Second, State agencies may incur potentially significant costs depending on the rights, benefits, and/or salaries negotiated. Any such costs cannot be reliably predicted or estimated at this time, as they depend wholly on the outcome of any subsequent negotiations. The Department of Budget and Management (DBM) estimates that approximately 3,900 supervisors in SPMS and 1,400 supervisors in the Maryland Department of Transportation are eligible to collectively bargain under the bill and, as such, the impact could be significant. Given the bill’s October 1, 2024 effective date, negotiations may occur as early as the latter half of fiscal 2025 and any agreed-upon rights, benefits, and/or salaries are unlikely to become effective until fiscal 2026 at the earliest.

Specifically excluding managerial or confidential employees of OPD from collective bargaining has no fiscal effect as this codifies existing practice.

Department of Budget and Management Staff Costs

Additionally, general fund expenditures for DBM increase by $86,483 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one labor relations representative for DBM to assist with negotiations, potential grievances, and correspondence with the representatives of bargaining units. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	$79,227
Operating Expenses	7,256
Total FY 2025 DBM Staff Expenditures	**$86,483**

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

Office of Administrative Hearings

State expenditures (all funds) may increase further to the extent that grievances stemming from the bill are referred to the Office of Administrative Hearings (OAH). Reimbursable revenues and expenditures for OAH increase accordingly. Agencies pay OAH on a per-case basis to cover the costs associated with adjudication; however, the number of cases referred to OAH annually as a result of the bill cannot be reliably estimated.

Additional Comments: The Public Employee Relations Act of 2023 established legislative intent that State law with respect to the labor rights of public-sector employees follow the rights of employees under the federal National Labor Relations Act (NLRA). NLRA excludes supervisors from coverage under the Act, although supervisors that have been discriminated against for refusing to violate NLRA may be covered.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 298 and HB 183 of 2023.

Designated Cross File: SB 192 (Senator Kramer) **-** Finance.

Information Source(s): Maryland Transportation Authority; Maryland Department of Aging; Maryland Environmental Service; Department of Commerce; Maryland Department of Emergency Management; Comptroller’s Office; Office of the Public Defender; Office of Administrative Hearings; Maryland State Department of Education; Maryland School for the Deaf; Public Employee Relations Board; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of Housing and Community Development; Department of Human Services; Department of Information Technology; Department of Juvenile Services; Maryland Department of Labor; Maryland Military Department; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; State Retirement Agency; National Labor Relations Board; Department of Legislative Services

Fiscal Note History: First Reader - January 28, 2024
km/mcr Third Reader - March 19, 2024
Revised - Amendment(s) - March 19, 2024

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