

HOUSE BILL 300

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P4

2001 Regular Session
11r0170
CF 11r0169

By: **The Speaker (Administration) and Delegates R. Baker, Barkley, Barve, Benson, Bobo, Bronrott, Brown, Burns, Cadden, Carlson, Cole, Conroy, D'Amato, C. Davis, D. Davis, DeCarlo, Dembrow, Dobson, Donoghue, Doory, Dypski, Franchot, Frush, Giannetti, Gladden, Goldwater, Gordon, Griffith, Grosfeld, Hammen, Harrison, Healey, Heller, Hill, Hixson, Howard, Hubbard, Hubers, Hurson, A. Jones, V. Jones, K. Kelly, Kirk, Kopp, Love, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Minnick, Moe, Mohorovic, Montague, Nathan-Pulliam, Oaks, Owings, Paige, Palumbo, Patterson, Pendergrass, Petzold, Phillips, Proctor, Rawlings, Riley, Rosso, Sher, Shriver, Sophocleus, Stern, Swain, Taylor, Turner, Valderrama, Vallario, and Zirkin**

Introduced and read first time: January 26, 2001
Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Personnel - Higher Education - Collective Bargaining**

3 FOR the purpose of expanding the scope of certain provisions of law governing
4 collective bargaining to include certain employees of certain State institutions of
5 higher education; providing for certain exemptions; requiring that the boards of
6 regents and the boards of trustees of certain State institutions of higher
7 education take certain actions in accordance with the requirements of certain
8 laws governing collective bargaining; requiring the boards of regents and the
9 boards of trustees to designate one or more representatives to participate as a
10 party in collective bargaining; specifying appropriate bargaining units for
11 certain employees of certain State institutions of higher education; authorizing
12 the boards of regents and the boards of trustees of certain State institutions of
13 higher education to assign classification titles and positions to the bargaining
14 units; authorizing the negotiation of supplemental memorandums of
15 understanding at constituent institutions of the University System of Maryland
16 under certain circumstances; authorizing the State Labor Relations Board to
17 investigate and resolve certain disputes; clarifying certain provisions;
18 prohibiting the Board from conducting certain elections within a certain period;
19 repealing the authority of the Board to certify an exclusive representative under
20 certain circumstances without an election; providing for the ratification of
21 certain supplemental memorandums of understanding; repealing certain
22 provisions of law that prohibit the Board of Regents of the University System of
23 Maryland from establishing or implementing a certain collective bargaining
24 plan; and generally relating to collective bargaining for employees of State
25 institutions of higher education.

1 BY repealing and reenacting, with amendments,
2 Article - Education
3 Section 12-110, 12-111, 14-104(f) and (g), and 14-408
4 Annotated Code of Maryland
5 (1999 Replacement Volume and 2000 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - State Personnel and Pensions
8 Section 3-102, 3-206, 3-207, 3-401, 3-403, 3-406, 3-501, 3-502, and 3-601
9 Annotated Code of Maryland
10 (1997 Replacement Volume and 2000 Supplement)

11 BY repealing
12 Chapter 298 of the Acts of the General Assembly of 1999
13 Section 6

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Education**

17 12-110.

18 (a) (1) Upon the recommendation of the Chancellor who shall consult with
19 the presidents, AND IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 3 OF THE
20 STATE PERSONNEL AND PENSIONS ARTICLE, the Board of Regents shall establish
21 general standards and guidelines governing the appointment, compensation,
22 advancement, tenure, and termination of all faculty and administrative personnel in
23 the University System of Maryland.

24 (2) These standards and guidelines shall recognize the diverse missions
25 of the constituent institutions.

26 (3) ON THE RECOMMENDATION OF THE CHANCELLOR WHO SHALL
27 CONSULT WITH THE PRESIDENTS, THE BOARD OF REGENTS SHALL DESIGNATE ONE
28 OR MORE REPRESENTATIVES TO PARTICIPATE AS A PARTY IN COLLECTIVE
29 BARGAINING ON BEHALF OF THE UNIVERSITY SYSTEM OF MARYLAND.

30 (b) The Board of Regents may establish different standards of compensation
31 based on the size and missions of the constituent institutions.

32 (c) Subject to such standards and guidelines, AND IN ACCORDANCE WITH THE
33 REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, a
34 president may:

35 (1) Prescribe additional personnel policies; and

1 (2) Approve individual personnel actions affecting the terms and
2 conditions of academic and administrative appointments.

3 12-111.

4 (a) Except as otherwise provided by law, appointments of the University
5 System of Maryland are not subject to or controlled by the provisions of the State
6 Personnel and Pensions Article that govern the State Personnel Management System.

7 (b) After appointment, employees in positions designated by the University
8 shall be regarded and treated in the same manner as skilled service or professional
9 service employees, with the exception of special appointments, in the State Personnel
10 Management System and:

11 (1) Have all rights and privileges of skilled service or professional service
12 employees, with the exception of special appointments, in the State Personnel
13 Management System;

14 (2) Have the right of appeal as provided by law, in any case of alleged
15 injustice;

16 (3) Shall be paid salaries not less than those paid in similar
17 classifications in other State agencies; and

18 (4) Shall retain their vacation privileges, retirement status, and benefits
19 under the State retirement systems.

20 (c) Subject to subsection (b) of this section, AND IN ACCORDANCE WITH THE
21 REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, the
22 Board of Regents shall establish general policies and guidelines governing the
23 appointment, compensation, advancement, tenure, and termination of all classified
24 personnel.

25 14-104.

26 (f) (1) (i) On the recommendation of the President, AND IN ACCORDANCE
27 WITH THE REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL AND PENSIONS
28 ARTICLE, the Board of Regents shall establish general standards and guidelines
29 governing the appointment, compensation, advancement, tenure, and termination of
30 all faculty, executive staff, and professional administrative personnel in the Morgan
31 State University.

32 (ii) Subject to such standards and guidelines, AND IN ACCORDANCE
33 WITH THE REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL AND PENSIONS
34 ARTICLE, the President may:

35 1. Adopt additional personnel policies; and

36 2. Approve individual personnel actions affecting the terms
37 and conditions of academic and administrative appointments.

1 (2) Except as otherwise provided by law, appointments of Morgan State
2 University are not subject to or controlled by the provisions of the State Personnel
3 and Pensions Article that govern the State Personnel Management System.

4 (3) (i) Notwithstanding any other provision of law, the Board of
5 Regents may create any position to the extent that the cost of the position, including
6 any fringe benefit costs, is funded from existing funds.

7 (ii) Nothing in this paragraph may be construed to require any
8 additional State General Fund support.

9 (iii) By September 1 of each year, the Board shall submit an annual
10 position accountability report to the Department of Budget and Management, the
11 Department of Legislative Services, and the Maryland Higher Education Commission
12 reporting the total positions created and the cost and the funding source for any
13 positions created by the University in the previous fiscal year.

14 (iv) The total number of positions authorized under this paragraph
15 shall be limited as specified annually in the State budget bill.

16 (4) ON THE RECOMMENDATION OF THE PRESIDENT, THE BOARD OF
17 REGENTS SHALL DESIGNATE ONE OR MORE REPRESENTATIVES TO PARTICIPATE AS
18 A PARTY IN COLLECTIVE BARGAINING ON BEHALF OF THE UNIVERSITY.

19 (g) (1) After appointment, employees in positions designated by the
20 University shall be regarded and treated in the same manner as skilled service or
21 professional service employees, with the exception of special appointments, in the
22 State Personnel Management System and:

23 (i) Have all rights and privileges of skilled service or professional
24 service employees, with the exception of special appointments, in the State Personnel
25 Management System;

26 (ii) Have the right of appeal as provided by law in any case of
27 alleged injustice;

28 (iii) Shall be paid salaries not less than those paid in similar
29 classifications in other State agencies; and

30 (iv) Shall retain their vacation privileges, accrued sick leave,
31 retirement status, and benefits under the State retirement systems.

32 (2) Subject to paragraph (1) of this subsection, AND IN ACCORDANCE
33 WITH THE REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL AND PENSIONS
34 ARTICLE, the Board of Regents shall establish general policies and guidelines
35 governing the appointment, compensation, advancement, tenure, and termination of
36 all classified personnel.

1 14-408.

2 (a) (1) On the recommendation of the President, AND IN ACCORDANCE WITH
3 THE REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE,
4 the Board of Trustees of St. Mary's College shall establish a personnel system.

5 (2) To carry out the requirements of this section, the Board [may]:

6 (i) [Establish] MAY ESTABLISH and abolish positions;

7 (ii) [Determine] MAY DETERMINE employee qualifications;

8 (iii) [Establish] MAY ESTABLISH terms of employment, including
9 compensation, benefits, holiday schedules, and leave policies; [and]

10 (iv) [Determine] MAY DETERMINE any other matters concerning
11 employees; AND

12 (V) SHALL DESIGNATE ONE OR MORE REPRESENTATIVES TO
13 PARTICIPATE AS A PARTY IN COLLECTIVE BARGAINING ON BEHALF OF THE COLLEGE
14 IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 3 OF THE STATE PERSONNEL
15 AND PENSIONS ARTICLE.

16 (b) The personnel system shall provide fair and equitable procedures for:

17 (1) The redress of employee grievances; and

18 (2) The hiring, promotion, and termination of employees in accordance
19 with law.

20 (c) (1) Except as provided in paragraph (2) of this subsection, an employee of
21 the College qualifies for and shall participate in the Employees' Pension System of the
22 State of Maryland or the Teachers' Pension System of the State of Maryland.

23 (2) An employee in a position determined by the Board to be a
24 professional or faculty position may join the optional retirement program under Title
25 30 of the State Personnel and Pensions Article.

26 **Article - State Personnel and Pensions**

27 3-102.

28 (a) Except as provided in this title or as otherwise provided by law, this title
29 applies to all employees of:

30 (1) the principal departments within the Executive Branch of State
31 government;

32 (2) the Maryland Insurance Administration;

33 (3) the State Department of Assessments and Taxation; [and]

1 (4) the State Lottery Agency; AND

2 (5) THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN STATE
3 UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY
4 COMMUNITY COLLEGE.

5 (b) This title does not apply to:

6 (1) employees of the Mass Transit Administration, as that term is
7 defined in § 7-601(a)(2) of the Transportation Article;

8 (2) an employee who is elected to the position by popular vote;

9 (3) an employee in a position by election or appointment that is provided
10 for by the Maryland Constitution;

11 (4) an employee who is:

12 (i) a special appointee in the State Personnel Management
13 System; or

14 (ii) 1. directly appointed by the Governor by an appointment that is
15 not provided for by the Maryland Constitution;

16 2. appointed by or on the staff of the Governor or Lieutenant
17 Governor; or

18 3. assigned to the Government House or the Governor's
19 Office;

20 (5) an employee assigned to the Board or with access to records of the
21 Board;

22 (6) an employee in:

23 (i) the executive service of the State Personnel Management
24 System; or

25 (ii) a unit of the Executive Branch with an independent personnel
26 system who is:

27 1. the chief administrator of the unit or a comparable
28 position that is not excluded under item (3) of this subsection as a constitutional or
29 elected office; or

30 2. a deputy or assistant administrator of the unit or a
31 comparable position;

32 (7) (i) a temporary or contractual employee in the State Personnel
33 Management System; or

1 (ii) a contractual, temporary, or emergency employee in a unit of
2 the Executive Branch with an independent personnel system;

3 (8) an employee who is entitled to participate in collective bargaining
4 under another law;

5 (9) AN EMPLOYEE OF THE UNIVERSITY SYSTEM OF MARYLAND,
6 MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, OR BALTIMORE
7 CITY COMMUNITY COLLEGE WHO IS:

8 (I) A CHIEF ADMINISTRATOR OR IN A COMPARABLE POSITION;

9 (II) A DEPUTY, ASSOCIATE, OR ASSISTANT ADMINISTRATOR OR IN A
10 COMPARABLE POSITION;

11 (III) A MEMBER OF THE FACULTY, INCLUDING A FACULTY
12 LIBRARIAN;

13 (IV) A STUDENT EMPLOYEE, INCLUDING A TEACHING ASSISTANT
14 OR A COMPARABLE POSITION, FELLOW, OR POST DOCTORAL INTERN;

15 (V) A CONTINGENT, CONTRACTUAL, TEMPORARY, OR EMERGENCY
16 EMPLOYEE WITH LESS THAN 2 YEARS OF CONTINUOUS SERVICE;

17 (VI) A CONTINGENT, CONTRACTUAL OR TEMPORARY EMPLOYEE
18 WHOSE POSITION IS FUNDED THROUGH A RESEARCH OR SERVICE GRANT OR
19 THROUGH CLINICAL REVENUES; OR

20 (VII) AN EMPLOYEE WHOSE REGULAR PLACE OF EMPLOYMENT IS
21 OUTSIDE THE STATE OF MARYLAND;

22 (10) AN EMPLOYEE OF A COMMUNITY COLLEGE OTHER THAN
23 BALTIMORE CITY COMMUNITY COLLEGE;

24 [(9)] (11) an employee whose participation in a labor organization would
25 be contrary to the State's ethics laws; or

26 [(10)] (12) any supervisory, managerial, or confidential employee as
27 defined by regulation by the Secretary.

28 3-206.

29 (a) The Board is responsible for administering and enforcing this title.

30 (b) In addition to any other powers or duties provided for elsewhere in this
31 title, the Board may:

32 (1) (i) establish guidelines for creating new bargaining units that
33 include a consideration of:

34 1. the effect of overfragmentation on the employer;

1 (b) The Board may not conduct an election for an exclusive representative of a
2 bargaining unit if the Board has CONDUCTED AN ELECTION OR certified an exclusive
3 representative for that bargaining unit within the preceding 2 years.

4 3-403.

5 (a) (1) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE Board
6 shall determine the appropriateness of each bargaining unit.

7 (2) If there is no dispute about the appropriateness of the establishment
8 of the bargaining unit, the Board shall issue an order defining an appropriate
9 bargaining unit.

10 (3) If there is a dispute about the appropriateness of the establishment of
11 the bargaining unit, the Board shall:

12 (i) conduct a hearing; and

13 (ii) issue an order defining an appropriate bargaining unit.

14 (b) If the appropriate bargaining unit as determined by the Board differs from
15 the bargaining unit described in the petition, the Board may:

16 (1) dismiss the petition; or

17 (2) direct an election in the appropriate bargaining unit if the signatures
18 included in the petition include those of at least 30% of the employees in the
19 appropriate bargaining unit.

20 (c) A bargaining unit shall consist only of employees defined in regulations
21 adopted by the Secretary and not specifically excluded by § 3-102(b) of this title.

22 (D) (1) THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN STATE
23 UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY
24 COMMUNITY COLLEGE EACH SHALL HAVE SEPARATE BARGAINING UNITS.

25 (2) APPROPRIATE BARGAINING UNITS SHALL CONSIST OF:

26 (I) ALL ELIGIBLE LABOR AND TRADES EMPLOYEES;

27 (II) ALL ELIGIBLE ADMINISTRATIVE, TECHNICAL, AND CLERICAL
28 EMPLOYEES EXCEPT PROFESSIONAL EMPLOYEES, AS DEFINED BY THE BOARD;

29 (III) ALL ELIGIBLE PROFESSIONAL EMPLOYEES, AS DEFINED BY
30 THE BOARD; AND

31 (IV) ALL ELIGIBLE SWORN POLICE OFFICERS.

32 [(d)] (E) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
33 SUBSECTION, THE Secretary or the Secretary's designee shall have the authority to
34 assign classification titles and positions to bargaining units as appropriate.

1 (2) THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER
2 EDUCATION SHALL HAVE THE AUTHORITY TO ASSIGN CLASSIFICATION TITLES AND
3 POSITIONS TO BARGAINING UNITS IN THAT INSTITUTION AS APPROPRIATE.

4 3-406.

5 (a) The Board shall certify as exclusive representative the employee
6 organization receiving the votes in an election from a majority of the employees
7 voting in the election.

8 [(b) Without conducting an election, the Board shall certify as exclusive
9 representative the employee organization designated in the petition filed under §
10 3-402 of this subtitle, if:

11 (1) that organization is the only employee organization that would be
12 named on a ballot in an election; and

13 (2) the organization files with the Board a certification that a majority of
14 the employees in the bargaining unit want to be represented by that organization.]

15 [(c) (B) After notice and an opportunity for a hearing, the Board may deny or
16 revoke certification as exclusive representative of an employee organization for
17 willful failure to comply with:

18 (1) this title; or

19 (2) the governing documents of the organization.

20 3-501.

21 (a) (1) The Governor OR THE GOVERNING BOARD OF A STATE INSTITUTION
22 OF HIGHER EDUCATION shall designate one or more representatives to participate as
23 a party in collective bargaining on behalf of the State OR THE STATE INSTITUTION OF
24 HIGHER EDUCATION.

25 (2) The exclusive representative shall designate one or more
26 representatives to participate as a party in collective bargaining on behalf of the
27 exclusive representative.

28 (b) The parties shall meet at reasonable times and engage in collective
29 bargaining in good faith.

30 (c) The parties shall make every reasonable effort to conclude negotiations in
31 a timely manner for inclusion by the principal unit in its budget request to the
32 Governor.

33 (d) (1) The parties, the Governor's designee OR THE DESIGNEE OF THE
34 GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION, and the
35 exclusive representative shall execute a memorandum of understanding
36 incorporating all matters of agreement reached.

1 (2) To the extent these matters require legislative approval or the
2 appropriation of funds, the matters shall be recommended to the General Assembly
3 for approval or for the appropriation of funds.

4 (3) TO THE EXTENT MATTERS INVOLVING A STATE INSTITUTION OF
5 HIGHER EDUCATION REQUIRE THE APPROPRIATION OF FUNDS, SUCH FUNDS SHALL
6 BE INCLUDED IN THE GOVERNING BOARD'S BUDGET REQUEST TO THE GOVERNOR.

7 (4) TO THE EXTENT MATTERS INVOLVING A STATE INSTITUTION OF
8 HIGHER EDUCATION REQUIRE LEGISLATIVE APPROVAL, THE LEGISLATION SHALL BE
9 RECOMMENDED TO THE GOVERNOR FOR SUBMISSION TO THE GENERAL ASSEMBLY.

10 (E) AT THE REQUEST OF EITHER THE EXCLUSIVE REPRESENTATIVE OR THE
11 BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF MARYLAND, THE PARTIES
12 SHALL NEGOTIATE A SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING ON ANY
13 ISSUE AT INSTITUTIONS OF THE UNIVERSITY SYSTEM OF MARYLAND.

14 [(e)] (F) Negotiations or matters relating to negotiations shall be considered
15 closed sessions under § 10-508 of the State Government Article.

16 3-502.

17 (a) Collective bargaining shall include all matters relating to wages, hours,
18 and other terms and conditions of employment.

19 (b) Collective bargaining may not include negotiations relating to the right of
20 an employee organization to receive service fees from nonmembers.

21 (c) Notwithstanding subsection (a) of this section, the Governor or the
22 Governor's designee AND THE GOVERNING BOARD OF A STATE INSTITUTION OF
23 HIGHER EDUCATION OR ITS DESIGNEE:

24 (1) shall not be required to negotiate over any matter that is inconsistent
25 with applicable law; and

26 (2) may negotiate and reach agreement with regard to any such matter
27 only if it is understood that the agreement with respect to such matter cannot become
28 effective unless the applicable law is amended by the General Assembly.

29 3-601.

30 (a) (1) A memorandum of understanding shall contain all matters of
31 agreement reached in the collective bargaining process.

32 (2) The memorandum shall be in writing and signed by the designated
33 representatives of the Governor OR THE GOVERNING BOARD OF A STATE
34 INSTITUTION OF HIGHER EDUCATION and the exclusive representative involved in
35 the collective bargaining negotiations.

1 (b) No memorandum of understanding is valid if it extends for less than 1 year
2 or for more than 3 years.

3 (c) (1) A memorandum of understanding is not effective until it is ratified by
4 the Governor and a majority of the votes cast by the employees in the bargaining unit.

5 (2) IN THE CASE OF A STATE INSTITUTION OF HIGHER EDUCATION, A
6 MEMORANDUM OF UNDERSTANDING IS NOT EFFECTIVE UNTIL IT IS RATIFIED BY
7 THE INSTITUTION'S GOVERNING BOARD AND:

8 (I) A MAJORITY OF THE VOTES CAST BY THE EMPLOYEES IN THE
9 BARGAINING UNIT; OR

10 (II) FOR A SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING
11 UNDER § 3-501(E) OF THIS TITLE, A MAJORITY OF VOTES CAST BY THE AFFECTED
12 EMPLOYEES IN THE BARGAINING UNIT AT THE INSTITUTION INVOLVED.

13 **Chapter 298 of the Acts of 1999**

14 [SECTION 6. AND BE IT FURTHER ENACTED, That the Board of Regents of
15 the University System of Maryland may not establish or implement a collective
16 bargaining plan for the system's nonfaculty employees. The prohibition established
17 under this Section supersedes any provision of law relating to the requirement for the
18 establishment and implementation of a collective bargaining plan as set forth in
19 Chapter(s) 515 (S.B. 682/H.B. 1026) of the Acts of the General Assembly of 1999.]

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2001.