

SENATE BILL 369

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SB 451/98 - FIN

2002 Regular Session  
2r1855  
CF 2r1856

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By: **Senator Dorman**

Introduced and read first time: January 28, 2002

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Firefighters and Emergency Medical Personnel - Procedural Guarantees**

3 FOR the purpose of altering provisions regarding the judicial review of certain  
4 decisions involving the suspension or termination of firefighters and emergency  
5 medical personnel; requiring the court to admit additional evidence under  
6 certain circumstances; prohibiting certain boards or commissions from making  
7 certain decisions regarding the suspension or termination of firefighters and  
8 emergency medical personnel under certain circumstances; providing for an  
9 exception to the prohibition; providing that certain firefighters and emergency  
10 medical personnel have certain rights; defining certain terms; specifying the  
11 procedure to be followed at interrogations or investigations of a firefighter or  
12 certain emergency medical personnel; and generally relating to procedural  
13 rights and judicial review of disciplinary actions against certain firefighters and  
14 emergency medical personnel.

15 BY repealing and reenacting, with amendments,  
16 Article - Labor and Employment  
17 Section 4-601 and 4-602  
18 Annotated Code of Maryland  
19 (1999 Replacement Volume and 2001 Supplement)

20 BY adding to  
21 Article - Labor and Employment  
22 Section 4-604 through 4-608  
23 Annotated Code of Maryland  
24 (1999 Replacement Volume and 2001 Supplement)

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

1 **Article - Labor and Employment**

2 4-601.

3 (a) In this subtitle the following words have the meanings indicated.

4 (B) "CHIEF" MEANS THE SUPERINTENDENT, COMMISSIONER, OR FIRE CHIEF  
5 OF A COUNTY OR MUNICIPAL CORPORATION OR A UNIT OF A COUNTY OR MUNICIPAL  
6 CORPORATION.

7 [(b)] (C) (1) "Employee" means a fire, emergency medical services,  
8 paramedic, rescue, or support employee hired and compensated by a county or  
9 municipal corporation or a unit of a county or municipal corporation.

10 (2) "Employee" does not include an employee who is on probationary  
11 status upon entry into a fire fighting, rescue, paramedic, or emergency medical  
12 services agency.

13 (D) "EMPLOYER" MEANS A COUNTY OR MUNICIPAL CORPORATION OR A UNIT  
14 OF A COUNTY OR MUNICIPAL CORPORATION THAT HIRES AND COMPENSATES FIRE,  
15 EMERGENCY MEDICAL SERVICES, PARAMEDIC, RESCUE, OR SUPPORT EMPLOYEES.

16 [(c)] (E) (1) "Final decision" means a final disciplinary decision of a  
17 personnel board, trial board, civil service commission, or statutorily established  
18 review board by which an employee is suspended for not less than 30 consecutive days  
19 or is terminated.

20 (2) "Final decision" does not include a decision reached through  
21 arbitration under a collective bargaining agreement.

22 4-602.

23 (a) An employee, county, or municipal corporation aggrieved by a final  
24 decision may obtain judicial review of that decision through an appeal filed in a  
25 circuit court of appropriate venue.

26 (b) An appeal under subsection (a) of this section shall be taken in accordance  
27 with Maryland Rules 7-201 through 7-210.

28 (c) Any party that is aggrieved by a final judgment of a circuit court under  
29 this subtitle may appeal to the Court of Special Appeals in the manner provided by  
30 law.

31 (d) In an appeal under subsection (a) of this section, the circuit court may:

32 (1) remand the case for further proceedings;

33 (2) affirm the final decision; or

34 (3) reverse or modify the decision if any substantial right of the  
35 petitioner may have been prejudiced because a finding, conclusion, or decision:

- 1 (i) is unconstitutional;
- 2 (ii) exceeds the statutory authority or jurisdiction of the final  
3 decision maker;
- 4 (iii) results from an unlawful practice;
- 5 (iv) is affected by any other error of law;
- 6 (v) is unsupported by competent, material, and substantial  
7 evidence in light of the entire record as submitted; [or]
- 8 (vi) is arbitrary and capricious; OR

9 (VII) IS INCONSISTENT WITH THE OUTCOME OF AN ADJUDICATION  
10 OF ANY CRIMINAL PROCEEDINGS THAT WERE EITHER PENDING OR ADJUDICATED AT  
11 THE TIME OF THE FINAL DECISION.

12 (E) IN AN APPEAL UNDER SUBSECTION (A) OF THIS SECTION, THE CIRCUIT  
13 COURT SHALL ADMIT AND CONSIDER ADDITIONAL EVIDENCE BEYOND THE RECORD  
14 OF THE ADMINISTRATIVE PROCEEDINGS IF THE COURT DETERMINES THAT:

15 (1) THE EMPLOYEE WAS NOT PROVIDED FULL AND ADEQUATE  
16 OPPORTUNITY TO PRESENT EVIDENCE IN THE ADMINISTRATIVE PROCEEDINGS; OR

17 (2) CONSIDERATIONS OF EQUITY REQUIRE ADMISSION OF ADDITIONAL  
18 EVIDENCE.

19 4-604.

20 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A FINAL  
21 DECISION MAY NOT BE RENDERED BASED ON ALLEGED MISDEMEANOR CRIMINAL  
22 CONDUCT OF AN EMPLOYEE IN WHICH FINAL ADJUDICATION OF THE CRIMINAL  
23 PROCEEDINGS IS PENDING.

24 (B) A FINAL DECISION MAY BE RENDERED BASED ON ALLEGED  
25 MISDEMEANOR CRIMINAL CONDUCT OF AN EMPLOYEE IN WHICH FINAL  
26 ADJUDICATION OF THE CRIMINAL PROCEEDINGS IS PENDING IF THE APPLICABLE  
27 PERSONNEL BOARD, TRIAL BOARD, CIVIL SERVICE COMMISSION, OR STATUTORILY  
28 ESTABLISHED REVIEW BOARD IN GOOD FAITH FINDS THAT THE CONDUCT:

29 (1) CAUSES SUBSTANTIAL IMPAIRMENT TO THE OPERATION OF THE  
30 EMPLOYING AGENCY; AND

31 (2) POSES A SUBSTANTIAL RISK TO THE PUBLIC.

32 4-605.

33 (A) WHENEVER AN EMPLOYEE IS UNDER INVESTIGATION OR SUBJECTED TO  
34 INTERROGATION BY THE EMPLOYER FOR ANY REASON WHICH COULD LEAD TO

1 DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL, THE INVESTIGATION OR  
2 INTERROGATION SHALL BE CONDUCTED AS PROVIDED IN THIS SUBSECTION:

3 (1) THE EMPLOYEE SHALL BE INFORMED OF THE NAME, RANK, AND  
4 COMMAND OF THE OFFICER IN CHARGE OF THE INVESTIGATION.

5 (2) THE EMPLOYEE UNDER INVESTIGATION SHALL BE FURNISHED WITH  
6 A COPY OF THE INVESTIGATORY FILE AND ANY EXCULPATORY INFORMATION, WITH  
7 THE EXCLUSION OF:

8 (I) THE IDENTITY OF CONFIDENTIAL SOURCES;

9 (II) ANY NONEXCULPATORY INFORMATION; AND

10 (III) RECOMMENDATIONS AS TO CHANGES, DISPOSITION, OR  
11 PUNISHMENT.

12 (3) THE EMPLOYEE SHALL BE FURNISHED THE EXCULPATORY  
13 INFORMATION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION NOT LESS THAN  
14 10 DAYS BEFORE ANY HEARING IF THE EMPLOYEE AND THE EMPLOYEE'S  
15 REPRESENTATIVE AGREE:

16 (I) TO EXECUTE A CONFIDENTIALITY AGREEMENT WITH THE  
17 EMPLOYER NOT TO DISCLOSE ANY OF THE MATERIAL CONTAINED IN THE RECORD  
18 FOR ANY PURPOSE OTHER THAN TO DEFEND THE EMPLOYEE; AND

19 (II) TO PAY ANY REASONABLE CHARGE FOR THE COST OF  
20 REPRODUCING THE MATERIAL INVOLVED.

21 (4) UPON COMPLETION OF THE INVESTIGATION, THE EMPLOYEE SHALL  
22 BE NOTIFIED OF THE NAME OF ANY WITNESS AND ALL CHARGES AND  
23 SPECIFICATIONS AGAINST THE EMPLOYEE NOT LESS THAN 10 DAYS PRIOR TO ANY  
24 HEARING.

25 (5) NO EMPLOYEE SHALL BE SUBJECTED TO INTERROGATION WITHOUT  
26 FIRST RECEIVING WRITTEN NOTICE OF THE INVESTIGATION IN SUFFICIENT DETAIL  
27 TO REASONABLY APPRISE THE EMPLOYEE OF THE NATURE OF THE INVESTIGATION.

28 (6) THE INTERROGATION SHALL BE CONDUCTED AT A REASONABLE  
29 HOUR, PREFERABLY AT A TIME WHEN THE EMPLOYEE IS ON DUTY, UNLESS THE  
30 SERIOUSNESS OF THE INVESTIGATION IS OF A DEGREE THAT AN IMMEDIATE  
31 INTERROGATION IS REQUIRED.

32 (7) THE INTERROGATION SHALL TAKE PLACE AT THE FACILITY WHERE  
33 THE INVESTIGATING OFFICER IS ASSIGNED OR AT THE FACILITY WHICH HAS  
34 JURISDICTION OVER THE PLACE WHERE THE INCIDENT UNDER INVESTIGATION  
35 ALLEGEDLY OCCURRED AS DESIGNATED BY THE INVESTIGATING OFFICER.

36 (8) (I) THE EMPLOYEE UNDER INVESTIGATION SHALL BE INFORMED  
37 OF THE NAME, RANK, AND UNIT OR COMMAND OF THE OFFICER IN CHARGE OF THE

1 INVESTIGATION, THE INTERROGATING OFFICER, AND ALL PERSONS PRESENT  
2 DURING THE INTERROGATION.

3 (II) ALL QUESTIONS DIRECTED TOWARD THE EMPLOYEE UNDER  
4 INTERROGATION SHALL BE ASKED BY AND THROUGH ONE INTERROGATOR DURING  
5 ANY ONE INTERROGATING SESSION, CONSISTENT WITH THE PROVISIONS OF  
6 PARAGRAPH (9) OF THIS SUBSECTION.

7 (9) INTERROGATING SESSIONS SHALL BE FOR REASONABLE PERIODS  
8 AND SHALL BE TIMED TO ALLOW FOR ANY PERSONAL NECESSITIES AND REST  
9 PERIODS AS ARE REASONABLE AND NECESSARY.

10 (10) THE EMPLOYEE UNDER INTERROGATION MAY NOT BE THREATENED  
11 WITH TRANSFER, DISMISSAL, OR DISCIPLINARY ACTION.

12 (11) (I) A COMPLETE WRITTEN OR TAPE-RECORDED RECORD SHALL BE  
13 KEPT OF THE COMPLETE INTERROGATION OF THE EMPLOYEE, INCLUDING ALL  
14 RECESS PERIODS.

15 (II) UPON COMPLETION OF THE INVESTIGATION, AND UPON  
16 REQUEST OF THE EMPLOYEE UNDER INVESTIGATION OR THE EMPLOYEE'S  
17 COUNSEL, A COPY OF THE RECORD OF THE INTERROGATION OF THE EMPLOYEE  
18 SHALL BE MADE AVAILABLE NOT LESS THAN 10 DAYS BEFORE A HEARING.

19 (12) IF THE EMPLOYEE UNDER INTERROGATION IS UNDER ARREST, OR IS  
20 LIKELY TO BE PLACED UNDER ARREST AS A RESULT OF THE INTERROGATION, THE  
21 EMPLOYEE SHALL BE COMPLETELY INFORMED OF HIS OR HER RIGHTS BEFORE THE  
22 COMMENCEMENT OF THE INTERROGATION.

23 (13) (I) AT THE REQUEST OF THE EMPLOYEE UNDER INTERROGATION,  
24 THE EMPLOYEE SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL OR ANY  
25 REPRESENTATIVE OF THE EMPLOYEE'S CHOICE WHO SHALL BE PRESENT AND  
26 AVAILABLE FOR CONSULTATION AT ALL TIMES DURING THE INTERROGATION.

27 (II) THE INTERROGATION SHALL BE SUSPENDED, NOT MORE THAN  
28 10 DAYS, UNTIL REPRESENTATION IS OBTAINED.

29 (B) (1) AN EMPLOYER MAY NOT INSERT ANY ADVERSE MATERIAL INTO ANY  
30 FILE OF THE EMPLOYEE UNLESS THE EMPLOYEE HAS HAD THE OPPORTUNITY TO  
31 REVIEW, SIGN, RECEIVE A COPY OF, AND COMMENT IN WRITING UPON THE ADVERSE  
32 MATERIAL, UNLESS THE EMPLOYEE WAIVES THESE RIGHTS.

33 (2) AN EMPLOYEE, UPON WRITTEN REQUEST, MAY HAVE ANY RECORD  
34 OF A FORMAL COMPLAINT MADE AGAINST THE EMPLOYEE EXPUNGED IF:

35 (I) THE EMPLOYER HAS EXONERATED THE EMPLOYEE OF ALL  
36 CHARGES, OR DETERMINED THAT THE CHARGES WERE UNSUBSTANTIATED OR  
37 UNFOUNDED;

1 (II) AN ADMINISTRATIVE HEARING BOARD ACQUITS, DISMISSES, OR  
2 MAKES A FINDING OF NOT GUILTY; OR

3 (III) 3 YEARS HAVE PASSED SINCE THE FINDINGS BY THE  
4 EMPLOYER OR THE ADMINISTRATIVE HEARING BOARD.

5 (C) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE CHIEF TO  
6 REGULATE COMPETENT AND EFFICIENT OPERATION AND MANAGEMENT OF THE  
7 UNIT OR AGENCY BY ANY REASONABLE MEANS INCLUDING TRANSFER AND  
8 REASSIGNMENT WHERE THAT ACTION IS NOT PUNITIVE IN NATURE AND WHERE THE  
9 CHIEF DETERMINES THAT ACTION TO BE IN THE BEST INTERESTS OF INTERNAL  
10 MANAGEMENT OF THE UNIT OR AGENCY.

11 4-606.

12 AN EMPLOYEE MAY NOT BE DISCHARGED, DEMOTED, DENIED PROMOTION,  
13 TRANSFERRED, REASSIGNED, OR OTHERWISE DISCRIMINATED AGAINST, OR  
14 THREATENED WITH SUCH TREATMENT, BECAUSE OF THE EMPLOYEE'S EXERCISE OF  
15 OR DEMAND FOR THE RIGHTS GRANTED IN THIS SECTION OR THE EMPLOYEE'S  
16 CONSTITUTIONAL RIGHTS.

17 4-607.

18 THE PROVISIONS OF THIS SUBTITLE SUPERSEDE ANY STATE, COUNTY, OR  
19 MUNICIPAL LAW, ORDINANCE, OR REGULATION THAT CONFLICTS WITH THE  
20 PROVISIONS OF THIS SUBTITLE, AND ANY LOCAL LEGISLATION SHALL BE  
21 PREEMPTED BY THE SUBJECT AND MATERIAL OF THIS SUBTITLE.

22 4-608.

23 ANY EMPLOYEE MAY WAIVE IN WRITING ANY OR ALL RIGHTS PROVIDED IN THIS  
24 SUBTITLE.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2002.