

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 447 (Delegate G. Clagett)
 Appropriations

State Personnel - State Personnel Management System and Employment Status

This bill establishes the Department of Personnel (DOP) as a principal unit in the Executive Branch, headed by the Secretary of Personnel. The bill repeals the authority of the Secretary of Transportation to establish an independent personnel management system for the Maryland Department of Transportation (MDOT) and transfers the MDOT personnel management authority to DOP. Additionally, the bill restricts special appointments, limits the number of special appointees to 200 at any given time, and repeals provisions related to positions currently considered to be special appointments or at-will. The bill stipulates that all State employees, including executive service employees, are to receive position descriptions and performance evaluations.

The provisions of the bill regarding the creation of DOP take effect July 1, 2006. The other provisions of the bill take effect July 1, 2007.

Fiscal Summary

State Effect: General fund expenditures could increase by \$1.5 million in FY 2007 and \$2.3 million in FY 2011 for increased personnel for a new DOP, as well as start-up costs for the department. This estimate does not reflect a potentially significant unquantifiable operational impact on both DOP and MDOT. Revenues would not be affected.

(\$ in millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.5	1.9	2.0	2.1	2.3
Net Effect	(\$1.5)	(\$1.9)	(\$2.0)	(\$2.1)	(\$2.3)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Secretary of Personnel serves at the pleasure of and is directly responsible to the Governor. The Secretary is responsible for DOP operations and must establish guidelines and procedures to promote the orderly and efficient operation of DOP. The Secretary is entitled to the salary provided for in the State budget. The bill shifts the State Personnel Management System (SPMS) under the authority of the Secretary of Budget and Management to the Secretary of Personnel.

Except where otherwise designated, only individuals that are in the Executive Service and are departmental Secretaries or deputy secretaries are special appointments and serve at the pleasure of the Governor. There may not be more than 200 positions considered to be special appointments at any given time. While the bill not only repeals the authorization for certain individual positions to be special appointments, such as the Director of the Patuxent Institution, it also repeals the authorization of groups of positions to be special appointments, such as Department of Business and Economic Development (DBED) employees hired after June 30, 1995, as well as positions that are assigned to the Government House and the Governor's Office.

On July 1, 2006, all of the functions, powers, duties, equipment, assets, liabilities, and employees of the Office of Personnel Services and Benefits (OPSB) in the Department of Budget and Management (DBM) must be transferred to DOP. With the exception of the Director of OPSB, OPSB employees are in the classified service. Transferred OPSB employees are to be appointed without further examination or qualification. Additionally, these employees must be placed in a classification comparable in duties and responsibilities to their former positions, and their salary or wages, accrued leave, or seniority rights may not be reduced.

On July 1, 2007, all MDOT employees are to be transferred into SPMS. After appointment, the employee is entitled to the same benefits provided to any employee subject to SPMS. Transferred MDOT employees are to be appointed without further examination or qualification, and must be appointed in the manner provided for other SPMS employees. Additionally, these employees must be placed in a classification comparable in duties and responsibilities to their former positions, and their salary or wages, accrued leave, or seniority rights may not be reduced. However, this bill may not be construed to affect the collective bargaining rights of the transit workers union members, the rights of employees hired at any time to join an employee organization, or the rights of Maryland Transit Administration employees to be included in a collective bargaining agreement.

Current Law/Background: The Task Force to Reform the State Personnel Management System issued its report recommending the restructuring of Maryland's personnel management system in January 1996. Chapter 347 of 1996, entitled *The State Personnel Management System Reform Act of 1996*, incorporated many of the task force's recommendations. It was the first time in over 70 years that the personnel system governing State employees was significantly restructured. Except for provisions relating to equal employment opportunity, the Act largely did not affect agencies with independent personnel systems such as MDOT, and had no effect on the judicial or legislative branches of State government.

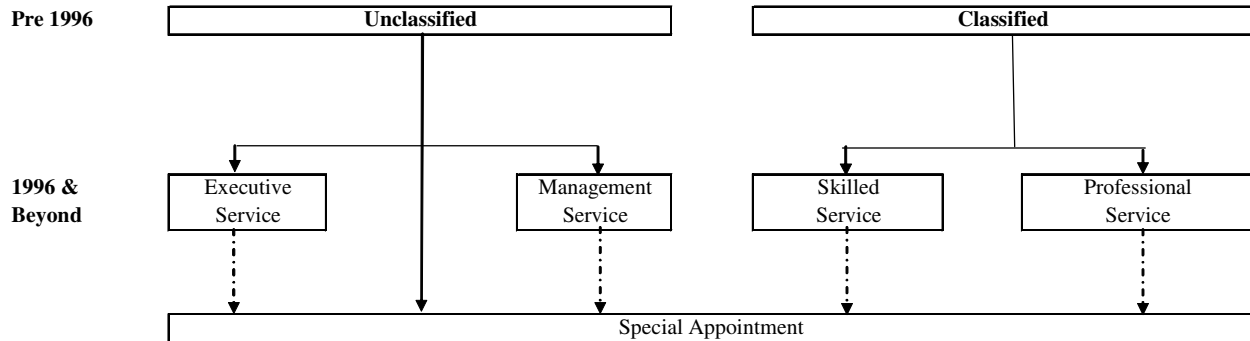
In addition, Chapter 349 of 1996 abolished the existing Department of Personnel as an independent unit within the Executive Branch of State government and designated the Department of Budget and Management (formerly the Department of Budget and Fiscal Planning) as its successor. The positions of the Secretary of Personnel and the Deputy Secretary of Personnel were also abolished, and the Secretary of Budget and Management was designated as the successor of the Secretary of Personnel.

Classes of Employees and Appointments to State Service

Before the enactment of Chapter 347, State employees were essentially grouped into two categories – the classified service and the unclassified service. Most State employees were in the classified service; these employees enjoyed a full range of employee protection laws designed to eliminate abuses associated with political patronage. The unclassified service consisted of at-will State employees, who served at the pleasure of the appointing authority, and positions exempted from the classified service by specific statutes.

As shown in **Exhibit 1**, Chapter 347 eliminated the classified and unclassified services and established four basic classes of regular employees: the skilled service, the professional service, the management service, and the executive service. The skilled and professional services generally comprised State employees who had been in the classified service; the management and executive services comprised many of the State employees who had been in the unclassified service, thereby retaining their at-will status.

Exhibit 1 Reclassifications Under Personnel Reform



Source: Department of Legislative Services

Most State employees are in the skilled service designation; they are selected on a competitive basis and enjoy full employee protections inherent in a merit system. Professional service employees have advanced knowledge in a field of science or learning acquired through special courses and study, often requiring a professional license or advanced degree. An employee is in the management service if the position involves direct oversight over personnel and financial resources and is not in the executive service. Executive service employees are generally political appointments at the highest levels of State government. Employees in the skilled and professional services are competitively selected and subject to termination for cause, while employees in the management and executive services are noncompetitively selected and subject to termination for any reason not legally prohibited. Statute was amended in 1997 to clarify that management service employees may not be dismissed based on political affiliation, beliefs, or opinions.

Chapter 347 also established within each of the classes of regular employees (skilled, professional, management, or executive service) a category of “special appointment employees” which retained several elements from the defunct unclassified service. Special appointments must meet any one of several specific criteria. For example, State law allows a position to be designated by the Secretary of Budget and Management as a special appointment if that position performs a significant policy role or directly supports members of the executive service. Most positions classified as special appointments, however, are specifically designated as such in the Annotated Code. About 80% of the special appointments are at-will.

Transportation Services Human Resources System (TSHRS)

MDOT was authorized to create an independent personnel system in 1992 for all of its units, to be fully implemented by 1996. The result was the establishment of TSHRS, which would cover most of the department's employees. MDOT was required to report annually on its progress regarding implementation and to detail any differences between its personnel system and the State system. Personnel classifications within the MDOT system are distinct from those in the State system; MDOT regulations provide that regular employees are grouped as either:

- career service employees, who are selected competitively and may only be dismissed for cause;
- commission plan employees, who work in marketing or sales and may be compensated based on private-sector equivalent employees – these employees serve at the pleasure of the appointing authority; or
- executive service employees, who serve at the pleasure of the appointing authority and either play a significant policy role; require expert, unique, or specialized training that would not apply to career service employees, as determined by regulation; or directly support the offices of the administrators.

MDOT's personnel system has remained virtually unchanged since its full implementation in 1996.

As shown in **Exhibit 2**, approximately 6,031 or 10.8% of SPMS and MDOT employees are considered at-will positions. Of these, approximately 3,167 are special appointment positions.

Exhibit 2
SPMS and MDOT Positions By Service
Fiscal 2005

<u>Service</u>	<u>Positions</u>	<u>% of Total</u>
Executive Service	188	0.3%
Management Service	1,869	3.3%
Special Appointment	3,167	5.7%
MDOT At-will*	807	1.4%
Subtotal At-will	6,031	10.8%
Professional Service	3,167	5.7%
Skilled Service	33,101	59.1%
Uniformed Police	1,597	2.8%
Independent Authority	363	0.6%
Special Appointment**	816	1.5%
MDOT Not At-will	9,275	16.5%
Subtotal Not At-will	48,319	86.2%
Unknown Classification/Vacant	1,702	3.0%
Total	56,052	100.0%

Note: Numbers may not sum to total due to rounding

*In MDOT, at-will employees are found in the Executive Service and in the Commission Pay Plan, and include Attorney General field positions assigned to the MDOT.

**Many of the not at-will special appointment positions are located in the Maryland State Department of Education.

Source: Department of Budget and Management, Maryland Department of Transportation, Department of Legislative Services

State Fiscal Effect:

Department of Personnel

Transferring OPSB from DBM to DOP would effectively transfer OPSB's budget and personnel from DBM to DOP. The fiscal 2007 proposed budget for OPSB is \$122.5 million and 122 positions.

DBM advises that creating a Department of Personnel would necessitate the creation of 29 new positions as shown in **Exhibit 3**.

Exhibit 3
New Positions Needed by the Department of Personnel
As Advised by DBM

<u>Position</u>	<u>Number</u>
<i>Professional and Support Staff</i>	
Finance Manager	1
Administrative Officer III	1
Fiscal Specialist I	1
Personnel Analyst	5
Administrator VII (legislative liaison)	1
Management Associate	3
Administrative Aide	4
<i>Attorney General Personnel</i>	
Associate Attorney General Division Director	1
Assistant Attorney General	1
<i>Data Processing/Information Technology Professionals</i>	
DP Director II	1
DP Prog/Analyst Manager	1
DP Prog/Analyst Lead	2
DP Prog/Analyst II	3
DP Functional Analyst II	1
DP Program Analyst Support	2
DP Functional Support	1
Total	29

DBM advises that the MDOT human resources office would continue to carry out human resources functions. Therefore, none of these individuals would transfer to DOP. Moreover, DBM advises that financial and fiscal personnel may not be able to transfer from DBM to DOP because these individuals do not exclusively work for OPSB, as is the

case with the attorney general positions. Similarly, while OPSB works with DBM's information technology office, DBM advises that, since these individuals do not work solely for OPSB, these individuals may not be able to transfer to DOP. As such, based on DBM's estimate that DOP would need to hire 29 new employees, general fund expenditures could increase by an estimated \$1.5 million in fiscal 2007, which accounts for a 90-day start-up delay. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	29
Salaries and Fringe Benefits	\$1,348,321
New Office Furniture, Equipment, and Supplies	140,665
Other Operating Expenses	<u>6,525</u>
Total FY 2007 State Expenditures	\$1,495,511

Future year expenditures reflect (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The Department of Legislative Services (DLS) advises that these personnel costs could be mitigated to the extent that some of the individuals who currently work in the MDOT human resources office, DBM's information technology office, or other personnel would transfer from their respective department to DOP. Since it is unknown which individuals would be able to transfer to DOP, these mitigating factors cannot be reliably quantified at this time.

DBM assumes that the Executive Director and Deputy Executive Director of OPSB would be promoted, respectively, to the Secretary and Deputy Secretary of DOP. Based on this assumption, DBM estimates that it would cost approximately \$30,000 in fiscal 2007 for increased salary and fringe benefits for these two individuals. Future year expenditures would reflect an increase of 4.6% annually.

In addition to the expenditures associated with hiring additional personnel for DOP, DBM advises that there could be a significant operational impact on DOP for the implementation of the initial changes to the classification and recruitment processes. According to DBM, this would require approximately 4,000 staff hours at an estimated operational impact of \$110,000.

DBM further advises that DOP would likely need \$35,000 in contractual services in fiscal 2007 only for setting up the new department. DLS advises that, since most of the current functions of OPSB would now be transferred to DOP, it is likely that these contractual services expenditures could be minimized. Moreover, given that DBM advises that DOP

would need to hire 29 new positions, DLS advises that DOP would likely need approximately \$10,000 in contractual services for setting up the new department.

Maryland Department of Transportation

MDOT advises that by eliminating TSHRS there would be a significant unquantifiable operational impact on the department's human resources office. MDOT advises that there are a number of procedural differences between their human resources system and SPMS. For example, there is a difference in drug screening and employee grievance procedures between the two systems that would need to be reconciled. Accordingly, MDOT anticipates more staff time and associated costs related to preparing new exams and testing methods, producing eligible lists, filling vacant positions, processing grievances, and extensive retraining of employees to adapt to the new personnel system. If there is redundancy between the functions of MDOT's human resources office and DOP, those individuals would likely be laid off; however, the number of positions affected cannot be reliably quantified at this time.

Moreover, there could be a potential impact resulting in the loss of productivity for MDOT employees since these individuals currently receive one less holiday (the day after Thanksgiving) than do SPMS employees.

According to MDOT, there may be a significant operational impact if it is unable to fill vacancies as quickly under SPMS as it can under its current personnel system.

Additional Comments: As the bill is currently drafted, there could be a significant fiscal impact from eliminating special appointment positions in certain agencies or departments. For example, DBED employees hired after June 30, 1995, must be in either the executive service or management service. As such, a DBED employee who previously functioned in a non-managerial role as a special appointment must be placed into one of those classifications.

DBM advises that the reorganization of DOP and the Department of Budget and Fiscal Planning creating DBM resulted in a budget reduction of \$659,000 for fiscal 1997 and the elimination of 18 positions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

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ncs/ljm

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