

HOUSE BILL 162

P4

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CF SB 2

By: **The Speaker and Delegates Jones, G. Clagett, McIntosh, and Simmons**
Introduced and read first time: January 25, 2007
Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Employees' Rights and Protections Act of 2007**

3 FOR the purpose of requiring the Secretary of Budget and Management to designate
4 certain positions in State government as special appointment positions based on
5 certain criteria; requiring the Secretary to provide certain information on
6 special appointments; providing that certain personnel actions regarding
7 certain special appointments in State government be made under certain
8 circumstances; providing a certain exception; extending current provisions to
9 require special appointees in the skilled, professional, and management services
10 to be given a certain written job description and an annual performance
11 evaluation; clarifying that certain disciplinary appeals by certain employees
12 may only be based on the grounds that an action is arbitrary or capricious;
13 clarifying that only employees in the executive or management services or
14 under a special appointment in the State Personnel Management System may
15 be terminated for any reason that is not illegal or unconstitutional, solely within
16 the discretion of the employee's appointing authority; providing that certain
17 employees may not be terminated under certain circumstances; providing that
18 terminated management service employees be given the reason for a
19 termination in writing; allowing a court to allow certain fees and costs as a
20 result of an action by certain employees; requiring the Department of
21 Legislative Services, with assistance from the Department of Budget and
22 Management, to undertake a review of the current State Personnel
23 Management System and other State laws, and the extent to which changes to
24 the laws may be needed particularly with respect to at-will and special
25 appointment positions; requiring the Secretary of Budget and Management to
26 develop certain processes through regulation for notifying certain employees of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 a certain status; and generally relating to State personnel in the Executive
2 Branch of State government.

3 BY repealing and reenacting, without amendments,
4 Article – State Personnel and Pensions
5 Section 1–101(c)
6 Annotated Code of Maryland
7 (2004 Replacement Volume and 2006 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – State Personnel and Pensions
10 Section 4–201, 4–302, 5–208, 7–102, 7–501, 11–113, and 11–305
11 Annotated Code of Maryland
12 (2004 Replacement Volume and 2006 Supplement)

13 Preamble

14 WHEREAS, The State personnel system has been in existence since 1920 and,
15 between 1920 and 1995, had been operating with minor changes but was considered to
16 be rigid, inflexible, centralized, and overly bureaucratic; and

17 WHEREAS, In 1995, the Task Force to Reform the State Personnel
18 Management System was assigned the task of reforming the State personnel system
19 and reported its findings and recommendations to the Governor in January 1996; and

20 WHEREAS, The State enacted the “State Personnel Management Reform Act of
21 1996” to establish a decentralized personnel management system in which State
22 departments and agencies were given significant responsibility over the management
23 of their workforce; and

24 WHEREAS, Personnel reform eliminated the classified and unclassified
25 services and established the skilled, professional, management, and executive services;
26 and

27 WHEREAS, The unclassified service consisted mostly of “at–will” employees,
28 and after 1996, most of these at–will employees were placed in the management or
29 executive services or were identified as “special appointments” in the State Personnel
30 Management System; and

31 WHEREAS, The intent of the General Assembly with the enactment of the 1996
32 personnel reform law was not to create a higher number of at–will employees; and

1 WHEREAS, The General Assembly recognizes that an effective State personnel
2 system is essential for effective provision of State services and that most State
3 employees should not be concerned over job security because of political changes or
4 inappropriate management practices; and

5 WHEREAS, The General Assembly established the Special Committee on State
6 Employee Rights and Protections in August 2005 to examine whether Maryland law
7 provides sufficient protections for State employees, particularly at-will employees,
8 against involuntary separations for illegal and unconstitutional reasons; and

9 WHEREAS, The Special Committee on State Employee Rights and Protections
10 completed its work in October 2006 with several recommendations to alter the laws
11 governing at-will State employment, now, therefore,

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

14 **Article – State Personnel and Pensions**

15 1–101.

16 (c) “Class” means a category of one or more similar positions, as established
17 by the Secretary in accordance with this article.

18 4–201.

19 (a) [This] **EXCEPT AS PROVIDED IN SUBSECTION (C)(2) OF THIS**
20 **SECTION, THIS** section does not apply to those units of State government with an
21 independent personnel system.

22 (b) In the State Personnel Management System the Secretary shall:

23 (1) establish classes;

24 (2) assign a rate of pay to each class;

25 (3) ensure that each class comprises one or more positions:

26 (i) that are similar in their duties and responsibilities;

27 (ii) that are similar in the general qualifications required to
28 perform those duties and responsibilities;

1 (iii) to which the same standards and, if required, tests of fitness
2 can be applied; and

3 (iv) to which the same rates of pay can be applied;

4 (4) give each class a descriptive classification title;

5 (5) prepare a description of each class; and

6 (6) (i) create additional classes; and

7 (ii) abolish, combine, or modify existing classes.

8 (c) The Secretary shall:

9 (1) assign a class to the skilled service, professional service,
10 management service, or executive service, as appropriate; and

11 (2) designate **SPECIAL APPOINTMENT** positions [that are filled by
12 special appointment] **IN THE STATE PERSONNEL MANAGEMENT SYSTEM OR**
13 **COMPARABLE POSITIONS IN AN INDEPENDENT PERSONNEL SYSTEM IN THE**
14 **EXECUTIVE BRANCH OF STATE GOVERNMENT THAT:**

15 (I) **MUST BE FILLED WITHOUT REGARD TO POLITICAL**
16 **AFFILIATION, BELIEF, OR OPINION; OR**

17 (II) **IN ACCORDANCE WITH THE PREVAILING CASE LAW OF**
18 **THE UNITED STATES SUPREME COURT, MAY BE FILLED WITH REGARD TO**
19 **POLITICAL AFFILIATION, BELIEF, OR OPINION.**

20 4-302.

21 (a) The Secretary shall submit to the Governor and, subject to § 2-1246 of
22 the State Government Article, to the General Assembly an annual report for each
23 fiscal year that:

24 (1) provides information about the various personnel areas under the
25 Secretary's jurisdiction, including:

26 (i) employee performance and efficiency;

- 1 (ii) use of leave by State employees;
- 2 (iii) incentive awards;
- 3 (iv) whistleblower proceedings;
- 4 (v) each denial of a pay increase, each disciplinary suspension,
5 each grievance, each involuntary demotion, and each rejection on probation; and
- 6 (vi) a summary of the equal employment opportunity report
7 required under § 5–204 of this article, including hiring, firing, promotions,
8 terminations, and rejections on probation, by race, sex, and age;

9 (2) provides statistics and rankings that compare minority group State
10 employees to all State employees in all job categories;

11 (3) provides information about part–time work and, in the Secretary’s
12 discretion, alternate work schedules, work days, and work locations; [and]

13 **(4) PROVIDES INFORMATION ON THE TOTAL NUMBER OF**
14 **POSITIONS DESIGNATED AS SPECIAL APPOINTMENTS, INCLUDING SPECIAL**
15 **APPOINTMENTS DESIGNATED WITH REGARD TO POLITICAL AFFILIATION,**
16 **BELIEF, OR OPINION; AND**

17 ~~[(4)]~~ **(5)** makes any recommendations about conditions in State
18 employment that the Secretary considers advisable.

19 (b) The report required by this section shall be submitted on or before
20 January 1 following the fiscal year to which it applies.

21 5–208.

22 (a) All personnel actions concerning an employee in the Executive Branch of
23 State government shall be made in accordance with § 2–302 of this article.

24 (b) [Except for special appointments or applicants for special appointment,
25 personnel] **PERSONNEL** actions concerning an employee or applicant for employment
26 in the skilled service or professional service of the State Personnel Management
27 System or comparable position in an independent personnel system in the Executive
28 Branch of State government shall also be made without regard to:

29 (1) political affiliation, belief, or opinion; or

1 (2) any other nonmerit factor.

2 (c) All personnel actions concerning an employee or applicant in the
3 management service shall also be made without regard to the employee's political
4 affiliation, belief, or opinion, **OR ANY OTHER NONMERIT FACTOR.**

5 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
6 **SUBSECTION, PERSONNEL ACTIONS CONCERNING SPECIAL APPOINTMENTS OR**
7 **APPLICANTS FOR SPECIAL APPOINTMENT IN THE STATE PERSONNEL**
8 **MANAGEMENT SYSTEM OR COMPARABLE POSITIONS IN AN INDEPENDENT**
9 **PERSONNEL SYSTEM IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT**
10 **SHALL BE MADE WITHOUT REGARD TO:**

11 **(I) POLITICAL AFFILIATION, BELIEF, OR OPINION; OR**

12 **(II) ANY OTHER NONMERIT FACTOR.**

13 **(2) FOR THE POSITIONS THAT ARE DESIGNATED BY THE**
14 **SECRETARY UNDER § 4-201(C)(2)(II) OF THIS ARTICLE, PERSONNEL ACTIONS**
15 **CONCERNING SPECIAL APPOINTMENTS OR APPLICANTS FOR SPECIAL**
16 **APPOINTMENT IN THE STATE PERSONNEL MANAGEMENT SYSTEM OR**
17 **COMPARABLE POSITIONS IN AN INDEPENDENT PERSONNEL SYSTEM IN THE**
18 **EXECUTIVE BRANCH OF STATE GOVERNMENT MAY BE MADE WITH REGARD TO**
19 **POLITICAL AFFILIATION, BELIEF, OR OPINION.**

20 **[(d)] (E)** The protections of this section are in addition to whatever legal or
21 constitutional protections an employee or applicant has.

22 7-102.

23 (a) (1) Each employee in the skilled service, professional service, and
24 management service, **INCLUDING SPECIAL APPOINTMENTS IN EACH OF THOSE**
25 **SERVICES**, shall be provided with a written position description which describes the
26 essential duties and responsibilities the employee is expected to perform and the
27 standards for satisfactory performance on a form approved by the Secretary.

28 (2) A successful applicant for a position in the skilled service,
29 professional service, or management service shall be provided with a position
30 description for review before accepting appointment to the position.

1 (b) The appointing authority or designee shall approve position descriptions
2 and revised position descriptions for the positions in the unit.

3 (c) (1) A supervisor shall:

4 (i) ensure the preparation of a position description for each
5 position over which the supervisor has primary direct responsibility;

6 (ii) maintain position descriptions for the positions under the
7 supervisor's jurisdiction; and

8 (iii) give each supervised employee a copy of the position
9 description for the employee's position.

10 (2) The supervisor and employee shall review the position description
11 for the employee's position and make any necessary revision:

12 (i) whenever there is a change in the essential functions of the
13 position; and

14 (ii) as part of the employee's performance appraisal.

15 (3) When there is no position description for a new or vacant position,
16 the primary direct supervisor of the position shall:

17 (i) prepare a position description for the position; and

18 (ii) submit it as part of the selection plan to fill the position.

19 (d) A position description shall contain information required by the
20 Secretary, including a description of the essential functions of the position.

21 (e) (1) The duties and responsibilities assigned to a position shall be
22 consistent with the duties and responsibilities for the position's assigned class.

23 (2) An employee may grieve the assignment of duties and
24 responsibilities only if those assigned duties and responsibilities clearly are applicable
25 to a different class.

26 7-501.

1 (a) The performance of each employee in the skilled service, professional
2 service, and management service, **INCLUDING SPECIAL APPOINTMENTS IN EACH**
3 **OF THOSE SERVICES**, shall be evaluated in accordance with this subtitle.

4 (b) The appointing authority shall ensure that each of the unit's employees
5 who is subject to this subtitle has performance evaluations in accordance with this
6 subtitle and procedures established by the Secretary.

7 (c) Each supervisor of an employee subject to this subtitle shall attend
8 mandatory training by the Department on the methods and procedures required in the
9 performance appraisal process.

10 (d) Factors in evaluating a manager's or supervisor's performance shall
11 include:

12 (1) attendance at any required performance appraisal training;

13 (2) adherence to established methods and procedures in conducting
14 performance appraisals;

15 (3) the timely completion of performance appraisals for employees
16 assigned to the supervisor; and

17 (4) except as provided in subsection (e) of this section, the results of an
18 anonymous survey of employees assigned to the supervisor in accordance with
19 procedures established by the Secretary.

20 (e) The anonymous survey requirement under subsection (d)(4) of this
21 section shall not be a factor in evaluating a manager's or supervisor's performance if
22 fewer than five employees are assigned to the manager or supervisor.

23 11–113.

24 (a) This section only applies to an employee:

25 (1) in the management service;

26 (2) in executive service; or

27 (3) under a special appointment described in § 6–405 of this article.

1 (3) in the executive service.

2 (b) Each employee subject to this section:

3 (1) serves at the pleasure of the employee's appointing authority; and

4 (2) may be terminated from employment for any reason **THAT IS NOT**
5 **ILLEGAL OR UNCONSTITUTIONAL**, solely in the discretion of the appointing
6 authority.

7 **(C) A MANAGEMENT SERVICE EMPLOYEE OR A SPECIAL APPOINTMENT**
8 **EMPLOYEE MAY NOT BE TERMINATED FOR THE PURPOSE OF CREATING A NEW**
9 **POSITION FOR ANOTHER INDIVIDUAL'S APPOINTMENT BECAUSE OF THAT**
10 **INDIVIDUAL'S POLITICAL AFFILIATION, BELIEF, OR OPINION.**

11 **(D) A MANAGEMENT SERVICE EMPLOYEE OR A SPECIAL APPOINTMENT**
12 **EMPLOYEE WHO IS TERMINATED UNDER SUBSECTION (B) OF THIS SECTION**
13 **SHALL BE GIVEN, IN WRITING, THE REASONS FOR THE TERMINATION BY THE**
14 **EMPLOYEE'S APPOINTING AUTHORITY.**

15 ~~[(c)]~~ **(E)** An employee or an employee's representative may file a written
16 appeal of an employment termination under this section as described under § 11-113
17 of this title.

18 **(F) AN EMPLOYEE SUBJECT TO THIS SECTION MAY INITIATE A CAUSE**
19 **OF ACTION BASED ON THE EMPLOYEE'S TERMINATION WITHOUT FIRST**
20 **EXHAUSTING THE EMPLOYEE'S ADMINISTRATIVE REMEDIES.**

21 **(G) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**
22 **JUDGMENT IN AN ACTION, THE COURT SHALL ALLOW THE EMPLOYEE**
23 **REASONABLE COUNSEL FEES AND OTHER COSTS OF THE ACTION.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That:

25 (a) The Department of Legislative Services, with the assistance of the
26 Department of Budget and Management, shall review the State Personnel
27 Management System law and regulations and other relevant State laws and
28 regulations to determine:

29 (1) the number of at-will employees, special appointments, and
30 management service employees in the Executive Branch agencies of State government;

1 (2) the rationale for designating the majority of, or all, employees in
2 an agency as at-will employees; and

3 (3) the possibility of providing additional merit system protections to
4 management service employees up to a certain grade level or depending on the job
5 description of the employee.

6 (b) The Department of Legislative Services shall make recommendations as
7 to appropriate and effective legislative and administrative changes in the State's
8 personnel systems that will help strike a better balance between the need to provide
9 flexibility in hiring and terminating employees and maintaining the dignity, worth,
10 and morale of the State's workforce.

11 (c) On or before December 31, 2007, the Department of Legislative Services
12 shall report its findings and recommendations to the President of the Senate and the
13 Speaker of the House of Delegates.

14 SECTION 3. AND BE IT FURTHER ENACTED, That the Secretary of the
15 Department of Budget and Management shall develop processes through regulation
16 that provide that all new employees, including at-will employees, receive written
17 notification of their position and classification, and that all employees, including
18 at-will employees, be periodically notified in writing of their employment status in
19 State government, including any changes in the employment classification of an
20 employee and the employee rights associated with the position and classification.

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 June 1, 2007.