

HOUSE BILL 162

P4

71r0804
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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2007

CHAPTER _____

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; providing that certain special
9 appointment positions may be filled with regard to certain criteria; extending
10 current provisions to require special appointees in the skilled, professional, and
11 management services to be given a certain written job description and an
12 annual performance evaluation; ~~clarifying that certain disciplinary appeals by~~
13 ~~certain employees may only be based on the grounds that an action is arbitrary~~
14 ~~or capricious~~; clarifying that only employees in the executive or management
15 services or under a special appointment in the State Personnel Management
16 System may be terminated for any reason that is not illegal or unconstitutional,
17 solely within the discretion of the employee's appointing authority; providing
18 that certain employees may not be terminated under certain circumstances;
19 ~~providing that terminated management service employees be given the reason~~
20 ~~for a termination in writing; allowing a court to allow certain fees and costs as a~~
21 ~~result of an action by certain employees~~; requiring the Secretary of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Transportation to designate certain positions in the Human Resources
 2 Management System that must be filled without regard to certain criteria and
 3 that may be filled with regard to certain criteria; requiring the Secretary of
 4 Transportation to report certain information to the Governor and the General
 5 Assembly on an annual basis; requiring the Department of Legislative Services,
 6 with assistance from the Department of Budget and Management, the
 7 Department of Transportation, and certain labor organizations, to undertake a
 8 review of the current State Personnel Management System and other State
 9 laws, and the extent to which changes to the laws may be needed particularly
 10 with respect to at-will and special appointment positions; requiring the
 11 Secretary of Budget and Management to develop certain processes through
 12 regulation for notifying certain employees of a certain status; requiring the
 13 Chancellor of the University System of Maryland and the Presidents of Morgan
 14 State University, St. Mary's College of Maryland, and Baltimore City
 15 Community College to identify certain nonmerit and at-will positions in certain
 16 personnel systems and report certain information to the Governor and the
 17 General Assembly on an annual basis; and generally relating to State personnel
 18 in the Executive Branch of State government.

19 BY repealing and reenacting, without amendments,
 20 Article – State Personnel and Pensions
 21 Section 1–101(c) and 11–113
 22 Annotated Code of Maryland
 23 (2004 Replacement Volume and 2006 Supplement)

24 BY repealing and reenacting, with amendments,
 25 Article – State Personnel and Pensions
 26 Section 4–201, 4–302, 5–208, 6–405, 7–102, 7–501, ~~11–113~~, and 11–305
 27 Annotated Code of Maryland
 28 (2004 Replacement Volume and 2006 Supplement)

29 BY repealing and reenacting, with amendments,
 30 Article – Transportation
 31 Section 2–103.4(b)
 32 Annotated Code of Maryland
 33 (2001 Replacement Volume and 2006 Supplement)

34 Preamble

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

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

4 WHEREAS, The State enacted the “State Personnel Management Reform Act of
5 1996” to establish a decentralized personnel management system in which State
6 departments and agencies were given significant responsibility over the management
7 of their workforce; and

8 WHEREAS, Personnel reform eliminated the classified and unclassified
9 services and established the skilled, professional, management, and executive services;
10 and

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

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

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

21 WHEREAS, The General Assembly established the Special Committee on State
22 Employee Rights and Protections in August 2005 to examine whether Maryland law
23 provides sufficient protections for State employees, particularly at–will employees,
24 against involuntary separations for illegal and unconstitutional reasons; and

25 WHEREAS, The Special Committee on State Employee Rights and Protections
26 completed its work in October 2006 with several recommendations to alter the laws
27 governing at–will State employment, now, therefore,

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

30 **Article – State Personnel and Pensions**

31 1–101.

1 (c) "Class" means a category of one or more similar positions, as established
2 by the Secretary in accordance with this article.

3 4-201.

4 (a) ~~{This} EXCEPT AS PROVIDED IN SUBSECTION (C)(2) OF THIS~~
5 ~~SECTION, THIS~~ section does not apply to those units of State government with an
6 independent personnel system.

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

8 (1) establish classes;

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

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

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

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

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

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

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

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

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

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

21 (c) The Secretary shall:

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

24 (2) designate **SPECIAL APPOINTMENT** positions [that are filled by
25 special appointment] **IN THE STATE PERSONNEL MANAGEMENT SYSTEM OR**

1 ~~COMPARABLE POSITIONS IN AN INDEPENDENT PERSONNEL SYSTEM IN THE~~
2 ~~EXECUTIVE BRANCH OF STATE GOVERNMENT THAT:~~

3 (I) MUST BE FILLED WITHOUT REGARD TO POLITICAL
4 AFFILIATION, BELIEF, OR OPINION; OR

5 (II) IN ACCORDANCE WITH ~~THE PREVAILING CASE LAW OF~~
6 ~~THE UNITED STATES SUPREME COURT~~ § 6-405(B) OF THIS ARTICLE, MAY BE
7 FILLED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION.

8 4-302.

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

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

14 (i) employee performance and efficiency;

15 (ii) use of leave by State employees;

16 (iii) incentive awards;

17 (iv) whistleblower proceedings;

18 (v) each denial of a pay increase, each disciplinary suspension,
19 each grievance, each involuntary demotion, and each rejection on probation; and

20 (vi) a summary of the equal employment opportunity report
21 required under § 5-204 of this article, including hiring, firing, promotions,
22 terminations, and rejections on probation, by race, sex, and age;

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

25 (3) provides information about part-time work and, in the Secretary's
26 discretion, alternate work schedules, work days, and work locations; [and]

27 (4) PROVIDES INFORMATION ON THE TOTAL NUMBER OF
28 POSITIONS DESIGNATED AS SPECIAL APPOINTMENTS, INCLUDING SPECIAL

1 **APPOINTMENTS DESIGNATED WITH REGARD TO POLITICAL AFFILIATION,**
 2 **BELIEF, OR OPINION; AND**

3 [(4)] (5) makes any recommendations about conditions in State
 4 employment that the Secretary considers advisable.

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

7 5-208.

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

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

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

16 (2) any other nonmerit factor.

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

20 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
 21 **SUBSECTION, PERSONNEL ACTIONS CONCERNING SPECIAL APPOINTMENTS OR**
 22 **APPLICANTS FOR SPECIAL APPOINTMENT IN THE STATE PERSONNEL**
 23 **MANAGEMENT SYSTEM OR COMPARABLE POSITIONS IN AN INDEPENDENT**
 24 **PERSONNEL SYSTEM IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT**
 25 **SHALL BE MADE WITHOUT REGARD TO:**

26 ~~(I)~~ **POLITICAL AFFILIATION, BELIEF, OR OPINION; OR**

27 ~~(II)~~ **ANY OTHER NONMERIT FACTOR.**

28 **(2) FOR THE POSITIONS THAT ARE DESIGNATED BY THE**
 29 **SECRETARY UNDER § 4-201(C)(2)(II) OF THIS ARTICLE OR BY THE SECRETARY**

1 OF TRANSPORTATION UNDER § 2-103.4(B)(2) OF THE TRANSPORTATION
2 ARTICLE, PERSONNEL ACTIONS CONCERNING SPECIAL APPOINTMENTS OR
3 APPLICANTS FOR SPECIAL APPOINTMENT IN THE STATE PERSONNEL
4 MANAGEMENT SYSTEM OR COMPARABLE POSITIONS IN AN INDEPENDENT
5 PERSONNEL SYSTEM IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT MAY
6 BE MADE WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION.

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

9 6-405.

10 (A) Except as otherwise provided by law, individuals in the following
11 positions in the skilled service, professional service, management service, or executive
12 service are considered special appointments:

13 (1) a position to which an individual is directly appointed by the
14 Governor by an appointment that is not provided for by the Maryland Constitution;

15 (2) a position to which an individual is directly appointed by the Board
16 of Public Works;

17 (3) as determined by the Secretary, a position which performs a
18 significant policy role or provides direct support to a member of the executive service;

19 (4) a position that is assigned to the Government House;

20 (5) a position that is assigned to the Governor's Office; and

21 (6) any other position that is specified by law to be a special
22 appointment.

23 (B) A POSITION THAT IS A SPECIAL APPOINTMENT MAY BE FILLED WITH
24 REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION IF THE SECRETARY
25 DETERMINES THAT THE POSITION:

26 (1) RELATES TO POLITICAL INTERESTS OR CONCERNS SO AS TO
27 WARRANT THAT POLITICAL AFFILIATION BE A REQUIREMENT FOR THE
28 POSITION; AND

1 **(2) (I) REQUIRES THE PROVISION OF MEANINGFUL DIRECT OR**
2 **INDIRECT INPUT INTO THE POLICY-MAKING PROCESS; OR**

3 **(II) PROVIDES ACCESS TO CONFIDENTIAL INFORMATION**
4 **AND:**

5 **1. REQUIRES SUBSTANTIAL INTERVENTION OR**
6 **COLLABORATION IN THE FORMULATION OF PUBLIC POLICY; OR**

7 **2. REQUIRES THE PROVISION OF DIRECT ADVICE OR**
8 **THE RENDERING OF DIRECT SERVICES TO AN APPOINTING AUTHORITY.**

9 7-102.

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

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

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

21 (c) (1) A supervisor shall:

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

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

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

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

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

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

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

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

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

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

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

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

15 7-501.

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

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

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

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

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

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

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

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

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

11 11–113.

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

13 (1) in the management service;

14 (2) in executive service; or

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

16 (b) (1) An employee or an employee's representative may file a written
17 appeal of a disciplinary action with the head of the principal unit.

18 (2) An appeal:

19 (i) must be filed within 15 days after the employee receives
20 notice of the disciplinary action; and

21 (ii) may only be based on the grounds that the disciplinary
22 action is ~~ARBITRARY, CAPRICIOUS,~~ illegal, or unconstitutional.

23 (3) The employee has the burden of proof in an appeal under this
24 section.

25 (c) The head of the principal unit may confer with the employee before
26 making a decision.

27 (d) (1) The head of the principal unit may:

- 1 (i) uphold the disciplinary action; or
- 2 (ii) rescind or modify the disciplinary action and restore to the
3 employee any lost time, compensation, status, or benefits.
- 4 (2) Within 15 days after receiving an appeal, the head of the principal
5 unit shall issue the employee a written decision.
- 6 (3) The decision of the head of the principal unit is the final
7 administrative decision.
- 8 (e) Within 15 days after issuance of a decision to rescind a disciplinary
9 action, the disciplinary action shall be expunged from the employee's personnel
10 records.

11 11-305.

- 12 (a) This section only applies to an employee who is in a position:
- 13 (1) under a special appointment;
- 14 (2) in the management service; or
- 15 (3) in the executive service.
- 16 (b) Each employee subject to this section:
- 17 (1) serves at the pleasure of the employee's appointing authority; and
- 18 (2) may be terminated from employment for any reason **THAT IS NOT**
19 **ILLEGAL OR UNCONSTITUTIONAL**, solely in the discretion of the appointing
20 authority.

21 **(C) A MANAGEMENT SERVICE EMPLOYEE OR A SPECIAL APPOINTMENT**
22 **EMPLOYEE DESIGNATED BY THE SECRETARY UNDER § 4-201(C)(2)(I) OF THIS**
23 **ARTICLE MAY NOT BE TERMINATED FOR THE PURPOSE OF CREATING A NEW**
24 **POSITION FOR ANOTHER INDIVIDUAL'S APPOINTMENT BECAUSE OF THAT**
25 **INDIVIDUAL'S POLITICAL AFFILIATION, BELIEF, OR OPINION.**

26 ~~**(D) A MANAGEMENT SERVICE EMPLOYEE OR A SPECIAL APPOINTMENT**~~
27 ~~**EMPLOYEE WHO IS TERMINATED UNDER SUBSECTION (B) OF THIS SECTION**~~

1 ~~SHALL BE GIVEN, IN WRITING, THE REASONS FOR THE TERMINATION BY THE~~
 2 ~~EMPLOYEE'S APPOINTING AUTHORITY.~~

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

6 ~~(F) AN EMPLOYEE SUBJECT TO THIS SECTION MAY INITIATE A CAUSE~~
 7 ~~OF ACTION BASED ON THE EMPLOYEE'S TERMINATION WITHOUT FIRST~~
 8 ~~EXHAUSTING THE EMPLOYEE'S ADMINISTRATIVE REMEDIES.~~

9 ~~(G) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO~~
 10 ~~JUDGMENT IN AN ACTION, THE COURT SHALL ALLOW THE EMPLOYEE~~
 11 ~~REASONABLE COUNSEL FEES AND OTHER COSTS OF THE ACTION.~~

12 Article - Transportation

13 2-103.4.

14 (b) (1) In the exercise of the Secretary's powers under this section, the
 15 Secretary may:

16 [(1)] (I) Create and abolish any position other than positions
 17 specifically provided for in this article; and

18 [(2)] (II) Determine the qualifications, appointment, removal, tenure,
 19 terms of employment, and compensation of employees unless otherwise prohibited by
 20 law.

21
 22 (2) THE SECRETARY SHALL DESIGNATE EXECUTIVE SERVICE
 23 EMPLOYEE AND COMMISSION PLAN EMPLOYEE POSITIONS IN THE HUMAN
 24 RESOURCES MANAGEMENT SYSTEM THAT:

25 (I) MUST BE FILLED WITHOUT REGARD TO POLITICAL
 26 AFFILIATION, BELIEF, OR OPINION; OR

27 (II) IN ACCORDANCE WITH THE CRITERIA ESTABLISHED
 28 UNDER § 6-405(B) OF THE STATE PERSONNEL AND PENSIONS ARTICLE, MAY BE
 29 FILLED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION.

1 **(3) ON AN ANNUAL BASIS, THE SECRETARY SHALL REPORT ON**
2 **THE TOTAL NUMBER OF POSITIONS DESIGNATED UNDER PARAGRAPH (2) OF**
3 **THIS SUBSECTION TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF**
4 **THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.**

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

6 (a) The Department of Legislative Services, with the assistance of the
7 Department of Budget and Management, the Department of Transportation, and labor
8 organizations that represent State employees, shall review the State Personnel
9 Management System law and regulations and other relevant State laws and
10 regulations, including the Department of Transportation's Human Resources
11 Management System, to determine:

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

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

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

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

24 (c) On or before ~~December 31, 2007~~ December 1, 2008, the Department of
25 Legislative Services shall report its findings and recommendations to the President of
26 the Senate and the Speaker of the House of Delegates.

27 SECTION 3. AND BE IT FURTHER ENACTED, That the Secretary of the
28 Department of Budget and Management shall develop processes through regulation
29 that provide that all new employees, including at-will employees, receive written
30 notification of their position and classification, and that all employees in the State
31 Personnel Management System and in the Department of Transportation, including
32 at-will employees, be ~~periodically~~ at 6-month intervals in writing of their
33 employment status in State government, including any changes in the employment

1 classification of an employee and the employee rights associated with the position and
2 classification.

3 SECTION 4. AND BE IT FURTHER ENACTED, That:

4 (a) The Chancellor of the University System of Maryland and the Presidents
5 of Morgan State University, St. Mary's College of Maryland, and Baltimore City
6 Community College shall identify all nonmerit and at-will positions in the personnel
7 systems of the University System of Maryland and its constituent institutions, Morgan
8 State University, St. Mary's College of Maryland, and Baltimore City Community
9 College.

10 (b) On an annual basis, the Chancellor of the University System of Maryland
11 and the Presidents of Morgan State University, St. Mary's College of Maryland, and
12 Baltimore City Community College shall report the information on nonmerit and
13 at-will positions required under subsection (a) of this section to the Governor and, in
14 accordance with § 2-1246 of the State Government Article, to the General Assembly.

15 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take
16 effect June 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.