

**SENATE BILL 2**

P4

(PRE-FILED)

71r0803

CF 71r0804

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By: **Senators Middleton, Miller, Currie, Astle, Britt, Conway, DeGrange, Dyson, Forehand, Frosh, Garagiola, Gladden, Hogan, Jones, Kasemeyer, Kelley, Kramer, Lenett, Madaleno, McFadden, Peters, Pinsky, Pugh, Raskin, Robey, Rosapepe, and Stone**

Requested: November 20, 2006

Introduced and read first time: January 10, 2007

Assigned to: Finance

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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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Management System and other State laws, and the extent to which changes to  
2 the laws may be needed particularly with respect to at-will and special  
3 appointment positions; requiring the Secretary of Budget and Management to  
4 develop certain processes through regulation for notifying certain employees of  
5 a certain status; and generally relating to State personnel in the Executive  
6 Branch of State government.

7 BY repealing and reenacting, without amendments,  
8 Article – State Personnel and Pensions  
9 Section 1–101(c)  
10 Annotated Code of Maryland  
11 (2004 Replacement Volume and 2006 Supplement)

12 BY repealing and reenacting, with amendments,  
13 Article – State Personnel and Pensions  
14 Section 4–201, 4–302, 5–208, 7–102, 7–501, 11–113, and 11–305  
15 Annotated Code of Maryland  
16 (2004 Replacement Volume and 2006 Supplement)

17 Preamble

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

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

24 WHEREAS, The State enacted the “State Personnel Management Reform Act of  
25 1996” to establish a decentralized personnel management system in which State  
26 departments and agencies were given significant responsibility over the management  
27 of their workforce; and

28 WHEREAS, Personnel reform eliminated the classified and unclassified  
29 services and established the skilled, professional, management, and executive services;  
30 and

31 WHEREAS, The unclassified service consisted mostly of “at-will” employees,  
32 and after 1996, most of these at-will employees were placed in the management or  
33 executive services or were identified as “special appointments” in the State Personnel  
34 Management System; and

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

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

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

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

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

16 **Article – State Personnel and Pensions**

17 1–101.

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

20 4–201.

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

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

25 (1) establish classes;

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

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

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

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

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

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

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

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

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

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

10 (c) The Secretary shall:

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

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

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

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

22 4-302.

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

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

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

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

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

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

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

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

22 5–208.

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

25 (b) [Except for special appointments or applicants for special appointment,  
26 personnel] **PERSONNEL** actions concerning an employee or applicant for employment  
27 in the skilled service or professional service of the State Personnel Management

1 System or comparable position in an independent personnel system in the Executive  
2 Branch of State government shall also be made without regard to:

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

4 (2) any other nonmerit factor.

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

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

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

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

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

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

25 7-102.

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

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

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

6           (c) (1) A supervisor shall:

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

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

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

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

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

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

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

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

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

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

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

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

1 7-501.

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

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

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

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

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

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

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

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

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

24 11-113.

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

26 (1) in the management service;

27 (2) in executive service; or

28 (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:

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

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

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

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

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

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

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