

# SENATE BILL 2

P4

(PRE-FILED)

71r0803  
CF HB 162

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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 11, 2007  
Assigned to: Finance

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: February 27, 2007

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## 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

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**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 that certain employees may not be terminated under certain circumstances;  
 2 ~~providing that terminated management service employees be given the reason~~  
 3 ~~for a termination in writing; allowing a court to allow certain fees and costs as a~~  
 4 ~~result of an action by certain employees; requiring the Secretary of~~  
 5 Transportation to designate certain positions in the Human Resources  
 6 Management System that must be filled without regard to certain criteria and  
 7 that may be filled with regard to certain criteria; requiring the Secretary of  
 8 Transportation to report certain information to the Governor and the General  
 9 Assembly on an annual basis; requiring the Department of Legislative Services,  
 10 with assistance from the Department of Budget and Management and certain  
 11 labor organizations, to undertake a review of the current State Personnel  
 12 Management System and other State laws, and the extent to which changes to  
 13 the laws may be needed particularly with respect to at-will and special  
 14 appointment positions; requiring the Secretary of Budget and Management to  
 15 develop certain processes through regulation for notifying certain employees of  
 16 a certain status; requiring the Chancellor of the University System of Maryland  
 17 and the Presidents of Morgan State University, St. Mary's College of Maryland,  
 18 and Baltimore City Community College to identify certain nonmerit and at-will  
 19 positions in certain personnel systems and report certain information to the  
 20 Governor and the General Assembly on an annual basis; and generally relating  
 21 to State personnel in the Executive Branch of State government.

22 BY repealing and reenacting, without amendments,  
 23 Article – State Personnel and Pensions  
 24 Section 1–101(c) and 11–113  
 25 Annotated Code of Maryland  
 26 (2004 Replacement Volume and 2006 Supplement)

27 BY repealing and reenacting, with amendments,  
 28 Article – State Personnel and Pensions  
 29 Section 4–201, 4–302, 5–208, 6–405, 7–102, 7–501, ~~11–113~~, and 11–305  
 30 Annotated Code of Maryland  
 31 (2004 Replacement Volume and 2006 Supplement)

32 BY repealing and reenacting, with amendments,  
 33 Article – Transportation  
 34 Section 2–103.4(b)  
 35 Annotated Code of Maryland  
 36 (2001 Replacement Volume and 2006 Supplement)

37 Preamble



1 1-101.

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

4 4-201.

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

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

9 (1) establish classes;

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

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

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

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

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

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

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

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

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

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

22 (c) The Secretary shall:

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

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

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

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

10 4-302.

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

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

16                           (i) employee performance and efficiency;

17                           (ii) use of leave by State employees;

18                           (iii) incentive awards;

19                           (iv) whistleblower proceedings;

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

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

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

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

1           (4) PROVIDES INFORMATION ON THE TOTAL NUMBER OF  
2 POSITIONS DESIGNATED AS SPECIAL APPOINTMENTS, INCLUDING SPECIAL  
3 APPOINTMENTS DESIGNATED WITH REGARD TO POLITICAL AFFILIATION,  
4 BELIEF, OR OPINION; AND

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

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

9 5–208.

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

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

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

18           (2) any other nonmerit factor.

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

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

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

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

1           (2) FOR THE POSITIONS THAT ARE DESIGNATED BY THE  
2 SECRETARY UNDER § 4-201(C)(2)(II) OF THIS ARTICLE AND BY THE SECRETARY  
3 OF TRANSPORTATION UNDER § 2-103.4(B)(2) OF THE TRANSPORTATION  
4 ARTICLE, PERSONNEL ACTIONS CONCERNING SPECIAL APPOINTMENTS OR  
5 APPLICANTS FOR SPECIAL APPOINTMENT IN THE STATE PERSONNEL  
6 MANAGEMENT SYSTEM OR COMPARABLE POSITIONS IN AN INDEPENDENT  
7 PERSONNEL SYSTEM IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT MAY  
8 BE MADE WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION.

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

11 6-405.

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

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

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

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

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

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

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

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

1                   **(1) RELATES TO POLITICAL INTERESTS OR CONCERNS SO AS TO**  
2 **WARRANT THAT POLITICAL AFFILIATION BE A REQUIREMENT FOR THE**  
3 **POSITION; AND**

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

6                               **(II) PROVIDES ACCESS TO CONFIDENTIAL INFORMATION**  
7 **AND:**

8                                       **1. REQUIRES SUBSTANTIAL INTERVENTION OR**  
9 **COLLABORATION IN THE FORMULATION OF PUBLIC POLICY; OR**

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

12 7-102.

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

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

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

24           (c) (1) A supervisor shall:

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

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

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



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

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

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

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

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

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

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

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

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

17       7-501.

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

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

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

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

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

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

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

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

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

14 11-113.

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

16 (1) in the management service;

17 (2) in executive service; or

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

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

21 (2) An appeal:

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

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

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

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

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

4 (i) uphold the disciplinary action; or

5 (ii) rescind or modify the disciplinary action and restore to the  
6 employee any lost time, compensation, status, or benefits.

7 (2) Within 15 days after receiving an appeal, the head of the principal  
8 unit shall issue the employee a written decision.

9 (3) The decision of the head of the principal unit is the final  
10 administrative decision.

11 (e) Within 15 days after issuance of a decision to rescind a disciplinary  
12 action, the disciplinary action shall be expunged from the employee's personnel  
13 records.

14 11-305.

15 (a) This section only applies to an employee who is in a position:

16 (1) under a special appointment;

17 (2) in the management service; or

18 (3) in the executive service.

19 (b) Each employee subject to this section:

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

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

24 (c) **A MANAGEMENT SERVICE EMPLOYEE OR A SPECIAL APPOINTMENT**  
25 **EMPLOYEE DESIGNATED BY THE SECRETARY UNDER § 4-201(C)(2)(I) OF THIS**  
26 **ARTICLE MAY NOT BE TERMINATED FOR THE PURPOSE OF CREATING A NEW**

1 POSITION FOR ANOTHER INDIVIDUAL'S APPOINTMENT BECAUSE OF THAT  
2 INDIVIDUAL'S POLITICAL AFFILIATION, BELIEF, OR OPINION.

3 ~~(D) A MANAGEMENT SERVICE EMPLOYEE OR A SPECIAL APPOINTMENT~~  
4 ~~EMPLOYEE WHO IS TERMINATED UNDER SUBSECTION (B) OF THIS SECTION~~  
5 ~~SHALL BE GIVEN, IN WRITING, THE REASONS FOR THE TERMINATION BY THE~~  
6 ~~EMPLOYEE'S APPOINTING AUTHORITY.~~

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

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

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

## 16 Article - Transportation

17 2-103.4.

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

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

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

25 (2) THE SECRETARY SHALL DESIGNATE EXECUTIVE SERVICE  
26 EMPLOYEE AND COMMISSION PLAN EMPLOYEE POSITIONS IN THE HUMAN  
27 RESOURCES MANAGEMENT SYSTEM THAT:

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

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

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

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

9                   (a) The Department of Legislative Services, with the assistance of the  
10 Department of Budget and Management and labor organizations that represent State  
11 employees, shall review the State Personnel Management System law and regulations  
12 and other relevant State laws and regulations to determine:

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

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

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

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

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

28                   SECTION 3. AND BE IT FURTHER ENACTED, That the Secretary of the  
29 Department of Budget and Management shall develop processes through regulation  
30 that provide that all new employees, including at-will employees, receive written  
31 notification of their position and classification, and that all employees, including  
32 at-will employees, be periodically notified in writing of their employment status in

1 State government, including any changes in the employment classification of an  
2 employee and the employee rights associated with the position and 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.

\_\_\_\_\_  
President of the Senate.

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Speaker of the House of Delegates.