

## CHAPTER 592

(House Bill 162)

AN ACT concerning

### State Employees' Rights and Protections Act of 2007

FOR the purpose of requiring the Secretary of Budget and Management to designate certain positions in State government as special appointment positions based on certain criteria; requiring the Secretary to provide certain information on special appointments; providing that certain personnel actions regarding certain special appointments in State government be made under certain circumstances; providing a certain exception; providing that certain special appointment positions may be filled with regard to certain criteria; extending current provisions to require special appointees in the skilled, professional, and management services to be given a certain written job description and an annual performance evaluation; ~~clarifying that certain disciplinary appeals by certain employees may only be based on the grounds that an action is arbitrary or capricious~~; clarifying that only employees in the executive or management services or under a special appointment in the State Personnel Management System may be terminated for any reason that is not illegal or unconstitutional, solely within the discretion of the employee's appointing authority; providing that certain employees may not be terminated under certain circumstances; ~~providing that terminated management service employees be given the reason for a termination in writing; allowing a court to allow certain fees and costs as a result of an action by certain employees~~; requiring the Secretary of Transportation to designate certain positions in the Human Resources Management System that must be filled without regard to certain criteria and that may be filled with regard to certain criteria; requiring the Secretary of Transportation to report certain information to the Governor and the General Assembly on an annual basis; requiring the Department of Legislative Services, with assistance from the Department of Budget and Management, the Department of Transportation, and certain labor organizations, to undertake a review of the current State Personnel Management System and other State laws, and the extent to which changes to the laws may be needed particularly with respect to at-will and special appointment positions; requiring the Secretary of Budget and Management to develop certain processes through regulation for notifying certain employees of a certain status; requiring the Chancellor of the University System of Maryland and the Presidents of Morgan State University, St. Mary's College of Maryland, and Baltimore City

Community College to identify certain nonmerit and at-will positions in certain personnel systems and report certain information to the Governor and the General Assembly on an annual basis; and generally relating to State personnel in the Executive Branch of State government.

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

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

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

#### Preamble

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

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

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

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

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

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

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

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

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

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

**Article – State Personnel and Pensions**

1–101.

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

4–201.

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

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

(1) establish classes;

- (2) assign a rate of pay to each class;
  - (3) ensure that each class comprises one or more positions:
    - (i) that are similar in their duties and responsibilities;
    - (ii) that are similar in the general qualifications required to perform those duties and responsibilities;
    - (iii) to which the same standards and, if required, tests of fitness can be applied; and
    - (iv) to which the same rates of pay can be applied;
  - (4) give each class a descriptive classification title;
  - (5) prepare a description of each class; and
  - (6) (i) create additional classes; and
    - (ii) abolish, combine, or modify existing classes.
- (c) The Secretary shall:
- (1) assign a class to the skilled service, professional service, management service, or executive service, as appropriate; and
  - (2) designate **SPECIAL APPOINTMENT** positions [that are filled by special appointment] **IN THE STATE PERSONNEL MANAGEMENT SYSTEM OR COMPARABLE POSITIONS IN AN INDEPENDENT PERSONNEL SYSTEM IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT THAT:**
    - (I) **MUST BE FILLED WITHOUT REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION; OR**
    - (II) **IN ACCORDANCE WITH ~~THE PREVAILING CASE LAW OF THE UNITED STATES SUPREME COURT~~ § 6-405(B) OF THIS ARTICLE, MAY BE FILLED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION.**

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

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

(i) employee performance and efficiency;

(ii) use of leave by State employees;

(iii) incentive awards;

(iv) whistleblower proceedings;

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

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

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

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

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

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

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

5-208.

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

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

- (1) political affiliation, belief, or opinion; or
- (2) any other nonmerit factor.

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

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

- ~~(I)~~ **POLITICAL AFFILIATION, BELIEF, OR OPINION; OR**
- ~~(II)~~ **ANY OTHER NONMERIT FACTOR.**

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

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

6-405.

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

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

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

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

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

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

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

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

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

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

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

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

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

7-102.

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

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

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

(c) (1) A supervisor shall:

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

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

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

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

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

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

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

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

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



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

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

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

7-501.

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

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

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

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

(1) attendance at any required performance appraisal training;

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

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

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

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

11-113.

(a) This section only applies to an employee:

- (1) in the management service;
- (2) in executive service; or
- (3) under a special appointment described in § 6-405 of this article.

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

(2) An appeal:

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

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

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

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

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

(i) uphold the disciplinary action; or

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

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

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

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

11-305.

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

- (1) under a special appointment;
- (2) in the management service; or
- (3) in the executive service.

(b) Each employee subject to this section:

- (1) serves at the pleasure of the employee's appointing authority; and
- (2) may be terminated from employment for any reason **THAT IS NOT ILLEGAL OR UNCONSTITUTIONAL**, solely in the discretion of the appointing authority.

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

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

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

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

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

### Article - Transportation

2-103.4.

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) The Chancellor of the University System of Maryland and the Presidents of Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College shall identify all nonmerit and at-will positions in the personnel

systems of the University System of Maryland and its constituent institutions, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College.

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

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

**Approved by the Governor, May 17, 2007.**