

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 162
 Appropriations

(The Speaker, *et al.*)

Finance

State Employees' Rights and Protections Act of 2007

This bill implements some of the recommendations made by the Special Committee on State Employee Rights and Protections in its October 30, 2006 final report.

The bill takes effect June 1, 2007.

Fiscal Summary

State Effect: Department of Budget and Management (DBM) general fund expenditures would increase by \$49,200 in FY 2008 only for one contractual employee. Revenues would not be affected.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|----------------|------------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 49,200 | 0 | 0 | 0 | 0 |
| Net Effect | (\$49,200) | \$0 | \$0 | \$0 | \$0 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The bill affects State operations only.

Small Business Effect: None.

Analysis

Bill Summary:

Designation and Reporting of Special Appointments in SPMS

The bill requires the Secretary of Budget and Management to designate special appointment positions in the State Personnel Management System (SPMS) and delineate which positions are political and nonpolitical appointments. DBM must include the total number of special appointments in its annual personnel report, including the number of those politically appointed.

A position that is classified as a special appointment may be filled with regard to political affiliation, belief, or opinion if the Secretary of Budget and Management determines that the position relates to political interests or concerns and performs a substantial policy-making role.

Designation and Reporting of Political Appointments in MDOT

The Secretary of Transportation has to delineate which executive service and commission plan positions in the Maryland Department of Transportation's (MDOT) Human Resources Management System are political and nonpolitical appointments. The Secretary of Transportation is required to report the number of political and nonpolitical appointments annually to the Governor and General Assembly.

Designation and Reporting of At-will Positions in Higher Education Institutions

The Chancellor of the University System of Maryland (USM) and the presidents of Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College are required to identify all nonmerit and at-will positions in their respective institutions and report this information to the Governor and General Assembly annually.

Protections for Special Appointments

Personnel actions concerning nonpolitical special appointments in SPMS (or comparable positions in other Executive Branch personnel systems) or an applicant for one of those positions must be made without regard to political affiliation, belief, or opinion. Personnel actions for political special appointments in SPMS (or comparable positions), however, may be made with regard to political affiliation, belief, or opinion.

Terminations

A management or executive service employee or a special appointment in SPMS may not be terminated for an illegal or unconstitutional reason. Moreover, a management service employee or a special appointment who fills a nonpolitical position may not be terminated to create an open position for another individual because of his/her political affiliation, belief, or opinion.

Employee Evaluations and Position Description Notification

Special appointments in the skilled, professional, and management services of SPMS must be provided with a written position description and receive performance evaluations in accordance with statutory requirements. The Secretary of Budget and Management must develop a process through regulation to provide all newly hired State employees with a written notification regarding their position classification. The regulations must also include a process by which all SPMS and MDOT employees are to be notified every six months of their position classification and its associated rights, including any classification changes.

Further Review

The bill requires the Department of Legislative Services (DLS), with the assistance of DBM, MDOT, and State employee labor organizations to review State personnel law and regulations to determine • the number of at-will employees, special appointments, and management service employees in the Executive Branch; • the rationale for designating the majority of, or all, employees in an agency as at-will; and • the possibility of providing additional merit system protections to certain management service employees. DLS must make recommendations for legislation and administrative changes in the State's personnel systems that will help strike a better balance between a flexible State workforce and maintaining the morale of State employees. The department must report its findings and recommendations to the President of the Senate and the Speaker of the House of Delegates by December 31, 2008.

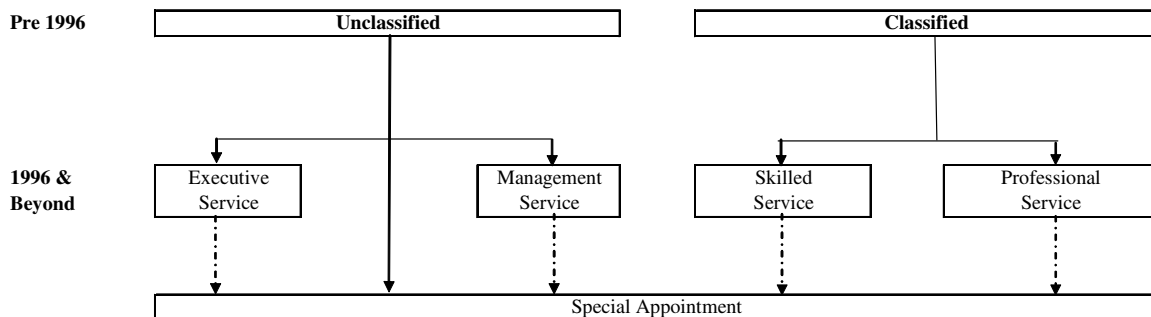
Current Law: Chapter 347 of 1996, entitled *The State Personnel Management System Reform Act of 1996*, was the first time in over 70 years that the personnel system governing State employees was significantly restructured. Except for provisions relating to equal employment opportunity, the Act largely did not affect agencies with independent personnel systems such as the Maryland Department of Transportation, and it had no effect on the judicial or legislative branches of State government.

Classes of Employees and Appointments to State Service

Before the enactment of Chapter 347, State employees were essentially grouped into two categories – the classified service and the unclassified service. Most State employees were in the classified service; these employees enjoyed a full range of employee protection laws designed to eliminate abuses associated with political patronage. The unclassified service consisted of at-will State employees, who served at the pleasure of the appointing authority, and positions exempted from the classified service by specific statutes.

As shown in **Exhibit 1**, Chapter 347 eliminated the classified and unclassified services and established four basic classes of regular employees: skilled service, professional service, management service, and executive service. The skilled and professional services generally comprised State employees who had been in the classified service; with certain exceptions, management and executive services comprised State employees who had been in the unclassified service, thereby retaining their at-will status.

Exhibit 1 **Reclassifications Under Personnel Reform**



Source: Department of Legislative Services

Four Regular Employee Classifications in SPMS

Most State employees are in the skilled service designation; this class includes several types of positions, such as clerical and maintenance employees. Professional service employees have advanced knowledge in a field of science or learning acquired through special courses and study, often requiring a professional license or advanced degree. An employee is in the management service if the position involves direct oversight over personnel and financial resources and is not in the executive service. Executive service employees are generally political appointments at the highest levels of State government.

Special Appointments

Chapter 347 also established within each of the classes of regular employees (skilled, professional, management, or executive service) a category of “special appointment employees” which retained several elements from the defunct unclassified service. Special appointments must meet any one of several specific criteria. For example, State law allows a position to be designated by the Secretary of Budget and Management as a special appointment if that position performs a significant policy role or directly supports members of the executive service. Most positions classified as special appointments, however, are specifically designated as such in the Annotated Code.

At-will Employees

Except for special appointments, employees in the skilled and professional services are competitively selected and subject to termination for cause. Employees in the management and executive services and employees serving under a special appointment serve at the pleasure of their appointing authority and may be terminated from employment for any reason, solely in the discretion of the appointing authority. Statute provides, however, that personnel actions concerning a management service employee or an applicant for such a position must be made without regard to the employee’s political affiliation, belief, or opinion.

Background: During the 2005 interim, the Legislative Policy Committee appointed a Special Committee on State Employee Rights and Protections to examine numerous matters regarding SPMS and terminations and separations of at-will employees. In the fall of 2006, the committee concluded its proceedings and issued a final report including the following recommendations for changes to the State’s personnel systems:

- Clarify the law to emphasize that only the lawfully designated appointing authority of a State employee may terminate that employee.
- Implement management service reforms including providing additional protection to employees in the management service up to a certain grade level, but not to the full extent of protections afforded to skilled or professional service employees; requiring that personnel actions for management service employees be made without regard to the employee’s political affiliation, belief, or opinion or *any other nonmerit factor*; requiring the appointing authority to give a terminated management service employee the reason for the termination; and in the appeals process, placing the burden on the employee to prove that the reason was arbitrary, capricious, illegal, or in violation of the employee’s constitutional rights.

- Implement special appointment reforms including clarifying which special appointments are patronage positions and requiring that employees be notified of that status; and requiring personnel actions for special appointments be made without regard to the employee's political affiliation, belief, or opinion unless the Secretary of Budget and Management has determined, pursuant to controlling case law, that the position is a patronage position.
- Clarify the law so that illegal political terminations include a termination to create a position for a new employee based on the new employee's political affiliation, belief, or opinion.
- Create a private right of action in State court for political firings in violation of State law and Article 40 of the Maryland Declaration of Rights that would provide for damages and attorneys' fees and would not require exhaustion of administrative remedies.
- Provide that State employees be notified in writing of their classification and the rights pertaining to it when they are hired and if their classification changes.
- Consider a legislative study of the number of at-will management service employees and the rationale for having entire departments or substantial parts of them designated "at-will."
- Consider requiring DBM to report to the General Assembly on the designation of positions as special appointments.
- Clarify the law to state that neither the Governor's Office nor the Governor's Appointments Office may utilize DBM to effectuate separations; and separate the function of the Director of the Office of Personnel Services and Benefits from the appointment activity of the Governor's Office or the Governor's Appointments Office.
- Consider implementing certain retirement options, including restoring the pension benefit to at-will employees terminated after 16 years of service for no cause and allowing employees who are terminated without cause to buy additional time in service to qualify for the State's retirement program.

State Fiscal Effect:

Increased Personnel Expenditures for DBM

DBM advises that the provision requiring it to delineate between politically filled and nonpolitically filled special appointment positions in SPMS would require an additional part-time personnel analyst at Grade 16, base. While identifying and delineating these positions would be a one-time occurrence, DBM advises that it would be faced with the ongoing task of keeping the information regarding these positions up-to-date so that it could be included in the annual report.

DLS disagrees and advises that DBM would likely require only one additional contractual position at an annual compensation of \$49,226 for salary (\$45,000) and fringe benefits (\$4,226) to assist in the initial identification and delineation of special appointment or comparable positions. This contractual position would only be required for one year, and after the initial period it is assumed that DBM could maintain its records regarding special appointments or comparable positions with existing resources and staffing levels. Therefore, DBM's contractual personnel expenditures should increase by \$49,226 in fiscal 2008 only. If DBM's workload increases to the extent that a regular position is necessary in future years, additional staff could be requested through the annual budget process.

Additional Reporting Requirements

There would be a minimal operational impact on MDOT, USM, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College related to identifying and reporting on certain political appointments and at-will positions. It is assumed that any such operational impact would be absorbable within existing personnel.

Legislative Study Expenditures

DLS advises that the study it would be required to undertake could be handled with existing resources and staffing levels. DBM advises that there may be an operational impact given that staff would need to assist DLS in the study. However, given that DBM assisted DLS in its research for the Special Committee on State Employee Rights and Protections, it is assumed that any operational impact could be absorbed within existing resources. It is also assumed that any operational impact on MDOT would be minimal and absorbable within existing resources.

Other provisions in the bill are clarifying or technical in nature and, apart from any minor operational impact, should not materially impact State finances.

Additional Information

Prior Introductions: None.

Cross File: SB 2 (Senator Middleton, *et al.*) – Finance.

Information Source(s): Department of Budget and Management, Governor's Office, Maryland Department of Transportation, Department of Legislative Services

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