

SENATE BILL 353

P4

8lr2100

By: **Senator Della**

Introduced and read first time: January 28, 2008

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 2008

CHAPTER _____

1 AN ACT concerning

2 **State Personnel - ~~Independent Personnel Systems in Executive Branch~~**
3 **Department of Transportation's Human Resources Management System -**
4 **Disciplinary Actions**

5 FOR the purpose of ~~expanding the scope of certain provisions of State personnel law~~
6 ~~governing actions an appointing authority must take before taking disciplinary~~
7 ~~action related to employee misconduct, and the authority to impose a~~
8 ~~disciplinary action, to include actions against certain employees of units in the~~
9 ~~Executive Branch of State government with independent personnel systems;~~
10 ~~making a certain conforming change; and generally relating to independent~~
11 ~~personnel systems in the Executive Branch of State government and~~
12 ~~disciplinary actions related to employee misconduct~~ requiring certain
13 regulations to provide that, except for certain suspensions, an appointing
14 authority or a designated representative may impose any disciplinary action
15 against an employee in the Department of Transportation's Human Resources
16 Management System no later than a certain number of days after acquiring
17 certain knowledge; requiring certain regulations to provide that, except for
18 certain suspensions, an appointing authority or a designated representative
19 may suspend an employee in the Human Resources Management System no
20 later than a certain number of working days following the close of a certain
21 shift; making certain stylistic and conforming changes; and generally relating to
22 disciplinary actions against employees in the Department of Transportation's
23 Human Resources Management System.

24 ~~BY repealing and reenacting, with amendments,~~
25 ~~Article - State Personnel and Pensions~~

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 ~~Section 11-102 and 11-106~~
 2 ~~Annotated Code of Maryland~~
 3 ~~(2004 Replacement Volume and 2007 Supplement)~~

4 BY repealing and reenacting, with amendments,
 5 Article – Transportation
 6 Section 2-103.4(d)
 7 Annotated Code of Maryland
 8 (2001 Replacement Volume and 2007 Supplement)

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

11 ~~**Article – State Personnel and Pensions**~~

12 ~~11-102.~~

13 ~~[This] EXCEPT AS PROVIDED IN § 11-106 OF THIS SUBTITLE, THIS subtitle~~
 14 ~~applies to all employees in the State Personnel Management System within the~~
 15 ~~Executive Branch except temporary employees.~~

16 ~~11-106.~~

17 ~~(A) THIS SECTION APPLIES TO ALL EMPLOYEES OF ALL UNITS IN THE~~
 18 ~~EXECUTIVE BRANCH OF STATE GOVERNMENT, INCLUDING A UNIT WITH AN~~
 19 ~~INDEPENDENT PERSONNEL SYSTEM, EXCEPT TEMPORARY EMPLOYEES.~~

20 ~~[(a)] (B) Before taking any disciplinary action related to employee~~
 21 ~~misconduct, an appointing authority shall:~~

22 ~~(1) investigate the alleged misconduct;~~

23 ~~(2) meet with the employee;~~

24 ~~(3) consider any mitigating circumstances;~~

25 ~~(4) determine the appropriate disciplinary action, if any, to be~~
 26 ~~imposed; and~~

27 ~~(5) give the employee a written notice of the disciplinary action to be~~
 28 ~~taken and the employee's appeal rights.~~

29 ~~[(b)] (C) Except as provided in subsection [(c)] (D) of this section, an~~
 30 ~~appointing authority may impose any disciplinary action no later than 30 days after~~
 31 ~~the appointing authority acquires knowledge of the misconduct for which the~~
 32 ~~disciplinary action is imposed.~~

~~1 [(c)] (D) (1) An appointing authority may suspend an employee without
2 pay no later than 5 workdays following the close of the employee's next shift after the
3 appointing authority acquires knowledge of the misconduct for which the suspension is
4 imposed.~~

~~5 (2) Saturdays, Sundays, legal holidays, and employee leave days are
6 excluded in calculating the 5 workday period under this subsection.~~

Article - Transportation

8 2-103.4.

9 (d) (1) The Secretary shall adopt regulations to govern the human
10 resources management system established under this section.

11 (2) The regulations shall address procedures for leave, appointment,
12 hiring, promotion, layoff, removal, termination, redress of grievances, and
13 reinstatement of employees and shall be presented to the Joint Committee on
14 Administrative, Executive, and Legislative Review under Title 10, Subtitle 1 of the
15 State Government Article.

16 (3) The regulations shall provide that before taking any disciplinary
17 action related to employee misconduct, an appointing authority or A designated
18 representative shall:

19 (i) Investigate the alleged misconduct;

20 (ii) Meet with the employee;

21 (iii) Consider any mitigating circumstances;

22 (iv) Determine the appropriate disciplinary action, if any, to be
23 imposed; and

24 (v) Give the employee a written notice of the disciplinary action
25 to be taken and the employee's appeal rights.

26 (4) **THE REGULATIONS SHALL PROVIDE THAT, EXCEPT AS**
27 **PROVIDED UNDER PARAGRAPHS (5) AND (6) OF THIS SUBSECTION, AN**
28 **APPOINTING AUTHORITY OR A DESIGNATED REPRESENTATIVE MAY IMPOSE ANY**
29 **DISCIPLINARY ACTION NO LATER THAN 30 DAYS AFTER THE APPOINTING**
30 **AUTHORITY OR DESIGNATED REPRESENTATIVE ACQUIRES KNOWLEDGE OF THE**
31 **MISCONDUCT FOR WHICH THE DISCIPLINARY ACTION IS IMPOSED.**

32 (5) (1) **THE REGULATIONS SHALL PROVIDE THAT, EXCEPT FOR**
33 **A SUSPENSION UNDER PARAGRAPH (6) OF THIS SUBSECTION, AN APPOINTING**
34 **AUTHORITY OR A DESIGNATED REPRESENTATIVE MAY SUSPEND AN EMPLOYEE**

1 WITHOUT PAY NO LATER THAN 5 WORKING DAYS FOLLOWING THE CLOSE OF THE
2 EMPLOYEE'S NEXT SHIFT AFTER THE APPOINTING AUTHORITY OR DESIGNATED
3 REPRESENTATIVE ACQUIRES KNOWLEDGE OF THE MISCONDUCT FOR WHICH
4 THE SUSPENSION IS IMPOSED.

5 (II) SATURDAYS, SUNDAYS, LEGAL HOLIDAYS, AND
6 EMPLOYEE LEAVE DAYS ARE EXCLUDED IN CALCULATING THE 5 WORKING DAY
7 PERIOD UNDER THIS PARAGRAPH.

8 [(4)] (6) (i) The regulations shall provide that [the] AN
9 appointing authority or A designated representative may suspend an employee, with
10 or without pay, pending the filing of charges for termination.

11 (ii) If an employee is suspended without pay, the appointing
12 authority or designated representative shall provide to the Secretary the charges for
13 termination within 30 calendar days after the first day of the suspension period.

14 (iii) If the appointing authority or designated representative files
15 the charges for termination after the 30-day period described in subparagraph (ii) of
16 this paragraph, the employee shall be placed on leave with pay until the Secretary
17 receives the charges.

18 [(5)] (7) The regulations shall provide that an appointing authority
19 or a designated representative and an employee may agree to the holding in abeyance
20 of a disciplinary action for a period not to exceed 18 months in order to permit an
21 employee to improve conduct or performance.

22 [(6)] (8) Subject to the provisions of paragraph [(7)] (9) of this
23 subsection, the employee grievance procedures shall include, at a minimum, the
24 following sequence of levels of appeal:

25 (i) Initially an aggrieved employee shall present any grievance
26 to the appointing authority or a designated representative, who shall render a written
27 decision;

28 (ii) Any appeal shall be presented to the Secretary or a
29 designated representative, who shall render a written decision;

30 (iii) If the dispute is still unresolved, the appeal shall be referred
31 to the Office of Administrative Hearings or a mutually agreed upon third party arbiter
32 who may not hear grievances relating to classification, salary, or fiscal matters; and

33 (iv) For disciplinary actions only, either party may appeal any
34 decision of the Office of Administrative Hearings or a third party arbiter to the
35 Secretary of Budget and Management or that Secretary's designee.

1 [(7)] (9) These regulations shall include procedures that ensure that
 2 all employees of the Department covered by this section and all employees hired after
 3 June 1, 1992 shall be entitled to the same levels of appeal provided for in the State
 4 employees' grievance procedures contained in Title 12 of the State Personnel and
 5 Pensions Article. Any disciplinary action taken against such employees by the
 6 Department shall include the same levels of appeal contained in Division I of the State
 7 Personnel and Pensions Article and its implementing regulations.

8 [(8)] (10) (i) During any stage of a complaint, grievance, or other
 9 administrative or legal action that concerns State employment by a full-time or
 10 part-time executive service, career service, or commission plan employee of the
 11 Department, or by a temporary or contractual employee of the Department, the
 12 employee may not be subjected to coercion, discrimination, interference, reprisal, or
 13 restraint by or initiated on behalf of the Department solely as a result of that
 14 employee's pursuit of a grievance, complaint, or other administrative or legal action
 15 that concerns State employment.

16 (ii) An employee of the Department may not intentionally take
 17 or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint
 18 against another employee solely as a result of that employee's pursuit of a grievance,
 19 complaint, or other administrative or legal action that concerns State employment.

20 (iii) An employee who violates the provisions of this paragraph is
 21 subject to disciplinary action, including termination of employment.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 23 October 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.