

HOUSE BILL 735

P4

9lr2684
CF SB 760

By: **Delegates Jones and Bronrott**

Introduced and read first time: February 10, 2009

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Personnel – At-Will Employment – Reforms and Reports**

3 FOR the purpose of repealing certain provisions of law that designate certain positions
4 and employees as being in the executive service or management service or as
5 special appointments in the State Personnel Management System; requiring the
6 Secretary of Budget and Management to designate management service
7 positions in the System that must be filled without regard to certain criteria
8 and that may be filled with regard to certain criteria; requiring the Secretary to
9 provide certain information to the Governor and the General Assembly on
10 certain management service positions; providing that certain management
11 service positions may be filled with regard to certain criteria; altering the
12 criteria for designating certain positions in the professional service; altering the
13 criteria for designating certain positions in the management service; repealing a
14 provision of law that designates individuals in certain positions in the
15 management service or the executive service as special appointments; excluding
16 from the scope of certain provisions of law governing appointments in the
17 skilled service and the professional service the recruitment for and the
18 appointment to a professional service position under certain circumstances;
19 altering the circumstances under which an appointing authority may select a
20 candidate for a certain position by recruitment; repealing a certain obsolete
21 provision relating to certain professional assistants; repealing a certain
22 requirement that certain employees in certain demonstration sites be in the
23 management service or a special appointment in the System; requiring the
24 Secretary of Budget and Management and the Secretary of Transportation to
25 compile a list of certain employees on or before a certain date of a certain years;
26 requiring the Secretary of Transportation to provide a certain list of employees
27 to the Secretary of Budget and Management on or before a certain date;
28 requiring the Secretary of Budget and Management to submit a certain report
29 on or before a certain date; requiring the Secretary of Budget and Management
30 to conduct a certain evaluation of certain special appointments and report the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 results of the evaluation on or before certain dates; and generally relating to
2 State personnel, employment categories, and special appointments.

3 BY repealing and reenacting, with amendments,
4 Article – State Personnel and Pensions
5 Section 4–201, 4–302, 5–208, 6–402, 6–403, 6–405(a), 7–201, and 7–203
6 Annotated Code of Maryland
7 (2004 Replacement Volume and 2008 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Correctional Services
10 Section 3–215(b) and 4–204
11 Annotated Code of Maryland
12 (2008 Replacement Volume)

13 BY repealing and reenacting, with amendments,
14 Article – Economic Development
15 Section 2–115
16 Annotated Code of Maryland
17 (2008 Volume)

18 BY repealing and reenacting, with amendments,
19 Article – Education
20 Section 2–104(c)
21 Annotated Code of Maryland
22 (2008 Replacement Volume)

23 BY repealing
24 Article – Family Law
25 Section 10–119.2(f)
26 Annotated Code of Maryland
27 (2006 Replacement Volume and 2008 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article – Family Law
30 Section 10–119.2(g) through (j)
31 Annotated Code of Maryland
32 (2006 Replacement Volume and 2008 Supplement)

33 BY repealing and reenacting, with amendments,
34 Article – Health – General
35 Section 19–107, 19–206, and 19–2106(d)
36 Annotated Code of Maryland
37 (2005 Replacement Volume and 2008 Supplement)

38 BY repealing and reenacting, with amendments,
39 Article – Health Occupations
40 Section 14–204(d)

1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2008 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – State Finance and Procurement
5 Section 5A–316
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2007 Supplement)

8 BY adding to
9 Article – State Government
10 Section 8–3A–02
11 Annotated Code of Maryland
12 (2004 Replacement Volume and 2008 Supplement)

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

15 **Article – State Personnel and Pensions**

16 4–201.

17 (a) This section does not apply to those units of State government with an
18 independent personnel system.

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

20 (1) establish classes;

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

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

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

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

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

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

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

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

31 (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 MANAGEMENT SERVICE POSITIONS IN THE STATE PERSONNEL MANAGEMENT SYSTEM THAT:

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

(II) IN ACCORDANCE WITH § 6-403(B) OF THIS ARTICLE, MAY BE FILLED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION; AND

[(2)] (3) designate special appointment positions in the State Personnel Management System that:

(i) must be filled without regard to political affiliation, belief, or opinion; or

(ii) in accordance with § 6-405(b) of this article, may be filled with regard to political affiliation, belief, or opinion.

4-302.

(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;

(4) provides information on the total number of:

(I) MANAGEMENT SERVICE POSITIONS DESIGNATED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION; AND

(II) positions designated as special appointments, including special appointments designated with regard to political affiliation, belief, or opinion; and

(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) 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) (1) [All] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, 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.

[(d) (1)] (2) Except as provided in paragraph **[(2)] (3)** of this subsection, personnel actions concerning special appointments or applicants for special appointment in the State Personnel Management System or comparable positions in

1 an independent personnel system in the Executive Branch of State government shall
2 be made without regard to political affiliation, belief, or opinion.

3 [(2)] **(3)** For the positions that are designated by the Secretary under
4 § 4–201(c)(2)(ii) **AND (3)(II)** of this article or by the Secretary of Transportation under
5 § 2–103.4(b)(2) of the Transportation Article, personnel actions concerning special
6 appointments or applicants for special appointment in the State Personnel
7 Management System or comparable positions in an independent personnel system in
8 the Executive Branch of State government may be made with regard to political
9 affiliation, belief, or opinion.

10 [(e)] **(D)** The protections of this section are in addition to whatever legal or
11 constitutional protections an employee or applicant has.

12 6–402.

13 (a) Except as otherwise provided by law, a position in the Executive Branch
14 of State government is in the professional service if the position:

15 (1) **(I) PRIMARILY INVOLVES DIRECT RESPONSIBILITY FOR**
16 **THE OVERSIGHT OF PERSONNEL; AND**

17 **(II) DOES NOT INVOLVE A SIGNIFICANT POLICY ROLE OR**
18 **PROVIDE DIRECT SUPPORT TO A MEMBER OF THE EXECUTIVE SERVICE; OR**

19 (2) **(I)** requires knowledge of an advanced type in a field of science
20 or learning customarily acquired by a course of specialized intellectual instruction and
21 study; and

22 [(2)] **(II)** normally requires a professional license, advanced degree, or
23 both.

24 (b) The professional service includes any other position that is determined by
25 the Secretary to be in the professional service.

26 6–403.

27 (a) Except as otherwise provided by law, a position in the Executive Branch
28 of State government is in the management service if the position:

29 (1) **(I)** primarily involves direct responsibility for the oversight and
30 management of personnel and financial resources;

31 [(2)] **(II)** requires the exercise of discretion and independent
32 judgment; and

1 ~~[(3)]~~ (III) is not in the executive service; OR

2 (2) INVOLVES A SIGNIFICANT POLICY ROLE OR PROVIDES DIRECT
3 SUPPORT TO A MEMBER OF THE EXECUTIVE SERVICE.

4 (B) A MANAGEMENT SERVICE POSITION MAY BE FILLED WITH REGARD
5 TO POLITICAL AFFILIATION, BELIEF, OR OPINION IF THE SECRETARY
6 DETERMINES THAT THE POSITION:

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

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

12 (II) PROVIDES ACCESS TO CONFIDENTIAL INFORMATION
13 AND:

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

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

18 ~~[(b)]~~ (C) The management service includes any other position that is
19 determined by the Secretary to be in the management service.

20 6-405.

21 (a) Except as otherwise provided by law, individuals in the following
22 positions in the skilled service[, AND professional service[, management service, or
23 executive service] are considered special appointments:

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

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

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

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

- 1 (5) a position that is assigned to the Governor's Office; and
- 2 (6) any other position that is specified by law to be a special
- 3 appointment.

4 7-201.

- 5 (a) **(1)** This subtitle does not apply to a special appointment position in
- 6 the skilled service or professional service.

7 **(2) (I) THIS SUBTITLE DOES NOT APPLY TO THE RECRUITMENT**

8 **FOR OR THE APPOINTMENT TO A PROFESSIONAL SERVICE POSITION IF THE**

9 **APPOINTING AUTHORITY:**

10 **1. DECIDES TO RECRUIT FOR THE POSITION UNDER §**

11 **7-203(2) OF THIS SUBTITLE;**

12 **2. DEMONSTRATES THAT THE POSITION, BASED ON**

13 **THE POSITION DESCRIPTION, IS DIFFICULT TO FILL FROM A LIST OF ELIGIBLE**

14 **CANDIDATES;**

15 **3. DEMONSTRATES THAT THE RECRUITMENT MUST**

16 **OCCUR IN A TIMELY MANNER; AND**

17 **4. NOTIFIES THE DEPARTMENT OF THE**

18 **RECRUITMENT.**

19 **(II) A RECRUITMENT AND APPOINTMENT UNDER THIS**

20 **PARAGRAPH SHALL OCCUR UNDER GUIDELINES ISSUED BY THE SECRETARY.**

- 21 (b) Each unit shall fill vacant skilled service and professional service
- 22 positions in accordance with a position selection plan.

23 (c) To ensure compliance with State and federal employment laws and to

24 ensure consistency in recruitment and hiring practices in the State Personnel

25 Management System, the Department shall:

26 (1) assist units in developing application forms, position selection

27 plans, selection tests, and announcement forms; and

28 (2) review and audit recruitment and hiring practices of all appointing

29 authorities at least once every 3 years.

30 (d) On request of a unit that is not able to conduct all or part of its own

31 recruitment or selection testing for a position because it lacks the appropriate

resources, the Department, consistent with its resources, shall assist the unit in conducting the requested recruitment and selection testing.

7-203.

An appointing authority may select candidates for a position:

(1) from an existing list of eligible candidates;

(2) [if no existing list of eligible candidates exists or] if the appointing authority decides to recruit for the position, by recruitment; or

(3) from a special list of eligible candidates whom the Division of Rehabilitation Services of the Department of Education certifies as being physically capable and adequately trained to qualify for the position.

Article – Correctional Services

3-215.

(b) (1) Except as otherwise provided in this subtitle, all officers and other employees of the Division shall be appointed and removed in accordance with the provisions of the State Personnel and Pensions Article.

(2) The following positions are in the executive service, the management service, or are special appointments of the skilled service or the professional service in the State Personnel Management System:

(i) Commissioner;

(ii) Deputy Commissioner;

(iii) Assistant Commissioner;

(iv) industries general manager;

(v) [chaplain;

(vi)] warden;

[(vii)] (VI) facility administrator; and

[(viii)] (VII) assistant warden.

(3) (i) The warden of a correctional facility is the appointing officer for the officers and other employees of that facility.

(ii) The Commissioner is the appointing officer for the other officers and employees in the Division.

4–204.

(a) The Institution shall have the following staff:

(1) two associate directors, one of whom is a competent psychiatrist with at least 3 years of experience in the practice or teaching of psychiatry and one of whom is a competent behavioral scientist with at least 3 years of experience in the practice or teaching of the individual's specialty in behavioral science;

(2) a warden;

(3) at least three additional psychiatrists or clinical psychologists;

(4) at least four State licensed certified social workers—clinical; and

(5) other professional and nonprofessional staff, as provided in the State budget.

(b) (1) The associate directors shall assist primarily in discharging the diagnostic and remediation functions of the Institution.

(2) The warden shall assist primarily in discharging the custodial function of the Institution.

(c) The staff members of the Institution are entitled to compensation as provided in the State budget.

(d) (1) Except as provided in paragraph (3) of this subsection or any other law, the staff members of the Institution are in the skilled service or professional service in the State Personnel Management System.

(2) With the approval of the Secretary, the Director shall appoint an individual to any position that the Secretary determines to be professional, including:

(i) each associate director;

(ii) each social worker;

(iii) each sociologist;

(iv) each physician; and

(v) each psychologist.

(3) The Director and each individual appointed under paragraph [(2)] (2)(I) of this subsection are in the executive service, in the management service, or a special appointment in the State Personnel Management System.

Article – Economic Development

2–115.

[(a) An employee of the Department who is hired on or after July 1, 1995, is in the executive service or management service in the State Personnel Management System, or is a special appointment.

(b) A position held by a classified service employee on June 30, 1995, remains a classified service position or its equivalent in the State Personnel Management System until the position becomes vacant.

[(c)] In accordance with the State budget, the Secretary shall set the compensation of Department employees.

Article – Education

2–104.

(c) (1) All professional assistants[, grade 31 and above,] shall serve at the pleasure of the State Board and the State Superintendent.

(2) All other professional assistants shall be removed in accordance with procedures set by the State Board.

Article – Family Law

10–119.2.

[(f) (1) Notwithstanding any other provision of law, all employees hired in a demonstration site after its designation as a demonstration site shall be in the management service or special appointments in the State Personnel Management System.

(2) If a position in a demonstration site is held by a classified service employee prior to its designation as a demonstration site, the position remains a classified service position or its equivalent in the State Personnel Management System until the position becomes vacant, at which time the position shall become a management service or special appointment position.]

[(g)] (F) The Secretary shall establish a performance incentive program to provide pay incentives for employees in a demonstration site.

[(h)] (G) In accordance with subsection **[(i)] (H)** of this section, a demonstration site may conduct a conciliation conference.

[(i)] (H) (1) If a complaint is filed to modify or enforce a duty of support in the circuit court of a jurisdiction in which a demonstration site is located, the court may issue a writ of summons to order the parties to appear and to produce documents at a conciliation conference.

(2) If a party fails to appear or fails to produce the documents required under this subsection, a representative of the demonstration site may apply, upon affidavit, to the court for a body attachment.

(3) If a party fails or refuses to obey a court order to appear or produce the documents required under this subsection at a conciliation conference, the court may issue a body attachment or compel compliance in any other manner available to the court to enforce its order.

[j] (I) The powers of the Secretary to carry out the provisions of this section shall be construed liberally.

Article – Health – General

19-107.

(a) (1) A majority of the full authorized membership of the Commission is a quorum.

(2) The decision of the Commission shall be by a majority of the quorum present and voting.

(b) The Commission shall meet at least six times each year, at the times and places that it determines.

(c) Each member of the Commission is entitled to:

(1) Compensation in accordance with the State budget; and

(2) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) (1) The Commission may employ a staff in accordance with the State budget.

(2) [(i) Staff hired after September 30, 1999, are in the executive service, management service, or are special appointments in the State Personnel Management System.

(ii)] The Commission, in consultation with the Secretary, shall determine the appropriate job classifications and grades for all staff.

19–206.

(a) A majority of the full authorized membership of the Commission is a quorum. However, the Commission may not act on any matter unless at least 4 members in attendance concur.

(b) The Commission shall meet at least 6 times a year, at the times and places that it determines.

(c) Each member of the Commission is entitled to:

(1) Compensation in accordance with the State budget; and

(2) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) (1) The Commission may employ a staff in accordance with the State budget.

(2) [(i) Staff hired after September 30, 1999, are in the executive service, management service, or are special appointments in the State Personnel Management System.

(ii)] The Commission, in consultation with the Secretary, shall determine the appropriate job classifications and grades for all staff.

(3) The Deputy Director and each principal section chief of the Commission serve at the pleasure of the Commission.

(4) The Commission, in consultation with the Secretary, may determine the appropriate job classifications and, subject to the State budget, the compensation for the Executive Director, Deputy Director, and each principal section chief of the Commission.

19–2106.

(d) (1) The Commission may employ a staff in accordance with the State budget.

(2) [(i) Staff hired after June 30, 2005, are in the executive service or management service or are special appointments in the State Personnel Management System.

(ii)] The Commission, in consultation with the Secretary, shall determine the appropriate job classifications and grades for all staff.

Article – Health Occupations

14–204.

(d) (1) The Secretary may employ a staff for the Board in accordance with the State budget. The Secretary may designate one of the staff as an executive director.

(2) [Staff hired after September 30, 1992, are in the executive service, management service, or are special appointments in the State Personnel Management System.

(3)] The Secretary shall determine the appropriate job classifications and grades for all staff.

Article – State Finance and Procurement

5A–316.

(a) (1) The trustees shall appoint a Director, with the approval of the Governor.

(2) The Director is the chief administrative officer of the Trust.

(b) The Director shall have:

(1) knowledge in architecture, history, archeology, or another appropriate discipline relating to historic preservation; and

(2) experience in historic preservation or related fields.

(c) The Director serves at the pleasure of the Board and may be removed with the concurrence of the Governor.

(d) (1) The Director is entitled to the salary provided in the State budget.

(2) The Director may employ a staff in accordance with the State budget.

(e) [Each position with the Trust is a special appointment in the State Personnel Management System.

(f)] Under the direction of the Board, the Director shall perform the duties and functions that the Board prescribes.

Article – State Government

8-3A-02.

(A) ON OR BEFORE DECEMBER 1 OF EACH GUBERNATORIAL ELECTION YEAR:

(1) THE SECRETARY OF BUDGET AND MANAGEMENT SHALL COMPILE A LIST OF THE POSITION, PAY GRADE, TITLE, AND NAME OF EACH EMPLOYEE IN THE STATE PERSONNEL MANAGEMENT SYSTEM WHO IS EMPLOYED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION UNDER § 4-201(C)(2)(II) AND (3)(II) OF THE STATE PERSONNEL AND PENSIONS ARTICLE; AND

(2) THE SECRETARY OF TRANSPORTATION SHALL COMPILE A LIST OF THE POSITION, PAY GRADE, TITLE, AND NAME OF EACH EMPLOYEE IN THE MARYLAND DEPARTMENT OF TRANSPORTATION'S HUMAN RESOURCE SYSTEM WHO IS EMPLOYED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION UNDER § 2-103.4(B)(2)(II) OF THE TRANSPORTATION ARTICLE.

(B) THE SECRETARY OF TRANSPORTATION SHALL PROVIDE THE LIST OF EMPLOYEES REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION TO THE SECRETARY OF BUDGET AND MANAGEMENT ON OR BEFORE DECEMBER 15 OF EACH GUBERNATORIAL ELECTION YEAR.

(C) IN ACCORDANCE WITH § 2-1246 OF THIS ARTICLE, ON OR BEFORE DECEMBER 31 OF EACH GUBERNATORIAL ELECTION YEAR, THE SECRETARY OF BUDGET AND MANAGEMENT SHALL SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF DELEGATES ON THE TOTAL NUMBER OF STATE EMPLOYEES EMPLOYED WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Secretary of Budget and Management, in consultation with the appropriate department secretaries and agency heads, shall evaluate all skilled and professional service positions considered special appointments under § 6-405(a)(3) of the State Personnel and Pensions Article to determine whether these positions should continue to be considered special appointments in the State Personnel Management System.

(b) The Secretary shall:

1 (1) on or before November 1, 2010, complete the evaluation required
2 under subsection (a) of this section; and

3 (2) on or before January 1, 2011, in accordance with § 2-1246 of the
4 State Government Article, report the results of the evaluation to the Governor and the
5 General Assembly.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 July 1, 2009.