Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1003 (Delegate Conaway)
Appropriations

State Employees - Separation from Service by Governor - Repeal of Authority

This bill repeals the Governor's power to eliminate or reduce funding in the State budget for a position, thereby separating a nontemporary employee in the State Personnel Management System (SPMS) from State service.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: The Department of Budget and Management (DBM) advises that the bill has a meaningful fiscal and operational impact on the State by creating a delay in the removal of positions and making it difficult to predict the resulting expenditure reductions. No effect on revenues.

Local Effect: State funding of local governments may be negatively affected due to less flexibility and less timely budget reductions at the State level. An increase in litigation in the circuit courts may occur due to the bill; any increase in the judicial workload can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: An employee separation occurs when the appropriation for the position is: (1) omitted by the Governor in the budget; (2) struck from the budget by the General Assembly; or (3) reduced by the Governor with the approval of the Board of Public

Works (BPW). Separated employees are not subject to the same rights as laid-off employees except they have the same reinstatement rights.

An employee separation is different from an employee layoff; an employee layoff occurs if the employee fills a position that will be abolished, discontinued, or vacated because of an organizational change or because of a stoppage or lack of work. An employee must be given at least 60 days notice before a layoff is effective. Generally, employees in a class are to be laid off according to seniority points, so that employees with less seniority points are laid off before those with more seniority points. Furthermore, an employee being laid off may displace another employee (*i.e.*, bumping right) who has the least seniority points in the same class or job series as the employee being laid off, or in any other class in which the laid-off employee has previously held satisfactory, nonprobationary status within the last 36 months.

Seniority points are calculated for SPMS employees who are laid off by combining the following: one point for each month of State employment; one point for each month of employment in the principal unit in which the layoff will occur; and one point for each month of employment in the job series in which the layoff will occur.

The individual with the most seniority points must be the first employee reinstated in the class from which the employee was laid off or separated from service or any lower class in the same job series within the principal department or independent unit in which the layoff or separation occurred. An individual with the most seniority points may also be reinstated to a comparable class.

Background: The Governor has used the authority being repealed in the bill several times in fiscal 2009 as part of cost containment actions approved by BPW. In October 2008, BPW abolished 40 filled positions across State government, with about half of the positions in the Maryland Department of Transportation. These positions had associated salaries of approximately $2.7 million, although the State budget was not reduced to reflect the savings. BPW met recently on March 4, 2009, and abolished two filled positions with total salaries of approximately $75,000, and assumed savings of 25% in fiscal 2009. The Governor's proposed fiscal 2010 State budget abolishes 1,448 regular, full-time equivalent positions. DBM reports that 15 of these positions are currently filled, with associated salaries of approximately $685,000. The remaining 1,433 positions are vacant.

State Fiscal Effect: DBM advises that the bill limits the budgetary options that the Governor has to deal with changes in the State's fiscal situation. By repealing the authority of the Governor to eliminate positions through budgetary reductions, the State may only use the layoff procedure to reduce positions in SPMS. DBM advises that the layoff procedure, which requires 60 days notice, creates a delay in the actual position reduction date and makes positions savings in the budget unpredictable. Under the bill, only the General Assembly could reduce appropriations for filled positions in State government, either during the regular legislative session or a special session.

According to the Administrative Office of the Courts, an increase in litigation may occur if the Governor exercises the constitutional authority to eliminate positions in spite of the bill (if enacted), essentially choosing to litigate the effect of the law. This issue was litigated in 1994 (*Workers' Compensation Commission v. Driver*, 336 Md 105) which resulted in numerous cases, but they were consolidated mitigating the impact on the courts. It is unclear to what extent the bill affects the workload of the Judiciary, but the impact is expected to be minimal and can be absorbed within existing resources.

Local Fiscal Effect: DBM advises that local government funding may be impacted as a result of less State flexibility and less timely budget reductions at the State level.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Board of Public Works, Department of Budget and Management, Governor's Office, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

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mlm/rhh

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