

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 735

(Delegate Jones, *et al.*)

Appropriations

Finance

State Personnel - At-Will Employment - Reforms and Reports

This bill implements several of the recommendations of the *At-will Employment in Maryland* report, compiled by the Department of Legislative Services (DLS) in accordance with Chapter 592 of 2007 – State Employees’ Rights and Protections Act of 2007.

The bill requires the Secretary of Budget and Management to evaluate all skilled and professional service positions considered special appointments and report the results by January 1, 2012, to the Governor and the General Assembly.

Fiscal Summary

State Effect: General fund expenditures in the Department of Budget and Management (DBM) increase by approximately \$36,000 in FY 2010, \$42,500 in FY 2011, and \$22,100 in FY 2012 to perform one-time tasks to implement the bill.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	36,000	42,500	22,100	0	0
Net Effect	(\$36,000)	(\$42,500)	(\$22,100)	\$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:

Changes to At-will Status of Specified Positions or Groups of Positions

The bill repeals references to the following positions or groups of positions as they relate to an employee's special appointment, management or executive service, or at-will status:

- Division of Correction chaplains;
- Department of Business and Economic Development (DBED) employees hired after June 30, 1995 (the Secretary of Budget and Management must determine the position categories for special appointments in DBED);
- Maryland State Department of Education professional assistants grades 31 and above;
- Child Support Enforcement Administration demonstration site employees;
- Maryland Health Care Commission staff hired after September 30, 1999;
- Health Services Cost Review Commission staff hired after September 30, 1999;
- Maryland Community Health Resources Commission staff hired after June 30, 2005;
- State Board of Physicians staff hired after September 30, 1992; and
- Maryland Historical Trust positions.

The bill specifies that changes to the designation of at-will or special appointment positions due to the bill that are encumbered on October 1, 2009, do not take effect until the position becomes vacant.

Changes to Skilled and Professional Service Classifications

An appointing authority is allowed to forego the State Personnel and Management System (SPMS) position selection plan and recruit for a skilled or professional service position if:

- the appointing authority decides to recruit for the position;
- the position is difficult to fill;
- the recruitment must occur in a timely manner; and
- DBM is notified.

The Secretary of Budget and Management must adopt regulations to implement a decentralized recruitment and appointment process. Such regulations must provide that

an appointing authority retains at least the same authority as it possessed on January 1, 2009, to recruit for positions designated as special appointments.

Changes to Special Appointment Designation

The bill specifies that, with some exceptions, the staff of the Office of the Attorney General (OAG) may not be designated as political special appointees but classifies OAG staff in the management or executive services as special appointments. The special appointment positions in the OAG that may be filled with regard to political affiliation, belief, or opinion include the Deputy Attorney General, special assistant to the Attorney General, executive counsel to the Attorney General, director or chief of a division or unit in the office, and principal counsel to a State unit. OAG staff continues to serve at the pleasure of the Attorney General, but only the individuals listed remain political appointees.

The bill repeals the section of law authorizing an individual in the management or executive services to be designated also as a special appointment.

Maryland's "Plum Book"

In each gubernatorial election year the Secretary of Budget and Management and the Secretary of Transportation must each compile a list of all positions (with specified employment information), in their respective personnel management systems, that are filled with regard to political affiliation, belief, or opinion. By December 31 of each gubernatorial election year, the Secretary of Budget and Management must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Delegates on the total number of individuals employed with regard to political affiliation in the State. This requirement is similar to the publication of the federal *Plum Book*, which is produced every four years (just after each presidential election) and identifies every noncompetitive appointment position in the federal government.

Annual Reporting

The Secretary of Budget and Management must submit an annual report by January 1 to the Governor and the General Assembly covering all units of the Executive Branch of State government, including independent personnel systems but excluding the University System of Maryland, that identifies the total number of positions designated as special appointments, including those designated with regard to political affiliation.

Evaluation of Skilled and Professional Service Positions

The Secretary of Budget and Management, in consultation with department secretaries and agency heads, must evaluate all skilled service and professional service positions considered special appointments to determine whether these positions should continue to be considered special appointments in SPMS. The evaluation must be completed by July 1, 2011, and a report must be submitted to the Governor and the General Assembly by January 1, 2012.

Joint Committee on Fair Practices and State Personnel Oversight

The bill also repeals the Legislative Joint Committee on Fair Practices and establishes a Joint Committee on Fair Practices and State Personnel Oversight. The joint committee has oversight of employment policies and personnel systems in the Executive Branch of State government and matters of equal employment opportunity policies and practices in State government. The committee reviews reports; evaluates the effectiveness of programs, policies, and practices; and identifies areas of concern and, as appropriate, recommends corrective measures to the Governor and the General Assembly.

Current Law:

Four Regular Employee Classifications in SPMS

There are four classifications of regular positions in SPMS – executive service, management service, professional service, and skilled service. Most SPMS 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.

Nonpolitical and Political Special Appointments

Within each of the classes of regular employees is a special appointment designation. A position may be considered a special appointment if appointed by the Governor or the Board of Public Works, assigned to the Governor's Office or Government House, directly supporting a member of the executive service, or otherwise specified by law. Personnel actions concerning nonpolitical special appointments must be made without regard to political affiliation.

Special appointment positions 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 and requires input into the policymaking process. Positions that provide access to confidential information, or require the provision of direct advice or services to an appointing authority, may also be filled with regard to political affiliation, as determined by the Secretary of Budget and Management.

At-will Employees

Except for special appointments, employees in the skilled and professional services are competitively selected and subject to termination for cause. If terminated, State law establishes an appeals procedure for employees in these categories.

Employees in the management and executive services and special appointment employees serve at the pleasure of their appointing authority and may be terminated from employment at the discretion of the appointing authority. If terminated, employees in these categories may appeal to the head of the principal unit, whose decision is final.

Transportation Service

The Transportation Service operates independent of SPMS. Three categories of regular employees are established in regulation:

- Career Service Employees: These positions are subject to a competitive review process. After a required probationary period, these employees may only be terminated for cause.
- Executive Service Employees: These positions are appointed; incumbents serve at the pleasure of the appointing authority.
- Commission Plan Employees: These positions are comparable to those in private industry; incumbents serve at the pleasure of the appointing authority. Compensation is based on a base salary plus commission.

The Secretary of Transportation is required to designate those positions within the Maryland Department of Transportation's (MDOT) Human Resources System that may be filled with regard to political affiliation, belief, or opinion.

Background: The Special Committee on State Employee Rights and Protections was established by resolution of the Legislative Policy Committee to examine termination of at-will employees in SPMS. In its 2006 final report, the committee made a number of recommendations, many of which were included in Chapter 592 of 2007 – State Employees' Rights and Protections Act of 2007. This Act also required DLS, with the

assistance of DBM, MDOT, and labor organizations that represent State employees, to review SPMS law and regulations and other relevant State laws and regulations, including MDOT's Human Resources System, to determine:

- the number of at-will employees, special appointments, and management service employees in the Executive Branch agencies of State government;
- the rationale for designating the majority of, or all, employees in an agency as at-will employees; and
- 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.

The Act also required DLS to recommend appropriate and effective legislative and administrative changes in the State's personnel systems that 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. DLS issued its report in December 2008, in which it made eight recommendations, including:

- repeal the provision of law that allows State positions in the executive service and the management service to also be designated as special appointments in SPMS;
- add more protections for certain management service positions, especially those who work on core functions of an agency or manage employees that provide basic government services;
- alter provisions of law requiring that all positions in DBED, the health regulatory commissions, Maryland Board of Physicians, Child Support Enforcement Administration's Demonstration Sites, and Maryland Historical Trust be at-will;
- chaplains and other specified positions in the Department of Public Safety and Correctional Services should be merit system positions;
- eliminate the grade 31 designation for professional assistants within the Maryland State Department of Education;
- alter provisions of law relating to the hiring of State employees to conform to the legislature's intent in the State Personnel Management Reform Act of 1996 that hiring should be decentralized;
- the Secretary of Budget and Management, in consultation with the appropriate cabinet secretaries, should reassess all skilled and professional service employee positions designated as special appointments by the Secretary under SPMS, to determine whether these positions should continue to be special appointments; and
- the Secretary of Budget and Management should, by December 31 during a gubernatorial election year, submit to the Governor, the President of the Senate,

and the Speaker of the House, a list of the position, pay grade, title, and name of each employee designated as a special appointment who is employed with regard to political affiliation, belief, or opinion.

In its report, DLS identified approximately 6,300 at-will positions in SPMS, and 860 at-will positions in MDOT. **Exhibit 1** shows the composition of SPMS and MDOT's Human Resources System as of July 1, 2008.

There are roughly 500 at-will employees on OAG's staff; all the staff has been designated at-will since 1916. All OAG employees are currently considered political special appointees. A recent review by DBM and OAG of job functions that meet the political appointment criteria in current law concluded that all attorneys in OAG meet the criteria. OAG notified the attorneys of their status in December 2008 and required acknowledgement of the designation by signed statement to be submitted by January 31, 2009.

State Fiscal Effect: The bill requires DBM to submit an annual report that identifies the total number of positions designated with regard to political affiliation; establish new regulations for recruitment of specified professional and skilled service positions; create and provide a list of all positions that are employed with regard to political affiliation, belief, or opinion by December 31 of each gubernatorial election year; and evaluate all skilled and professional service positions that have special appointment designation and report the results of this evaluation by January 2012.

DBM advises that it cannot absorb the additional work with existing resources. DLS concurs. To implement the bill, DBM requires one three-quarter time human resources analyst. The position is a temporary, 27-month assignment. Accounting for the bill's October 1 effective date, general fund expenditures increase \$35,956 in fiscal 2010 to implement the bill. Expenditures increase by \$42,463 in fiscal 2011 and by \$22,121 in fiscal 2012 to complete and submit the evaluation by January 2012.

Contractual Positions	0.75
Salaries and Fringe Benefits	\$30,698
Additional Equipment and Supplies	<u>5,258</u>
Total FY 2010 State Expenditures	\$35,956

Exhibit 1
Summary Executive Branch Personnel Systems
State Personnel Management System

<u>Service</u>	<u>At-will?</u>	<u>Positions</u>	<u>% of Total</u>
Executive Service	Yes	202	0.5%
Management Service	Yes	1,800	4.1%
Special Appointment	Yes	4,132	9.4%
Designated Political Special Appointment	Yes	169	0.4%
<i>Subtotal</i>		<i>6,303</i>	<i>14.3%</i>
Professional Service	No	3,130	7.1%
Skilled Service	No	34,683	78.6%
<i>Subtotal</i>		<i>37,813</i>	<i>85.7%</i>
<i>Total SPMS</i>		<i>44,116</i>	<i>100.0%</i>

MDOT Human Resources System (HRS)

Executive Service	Yes	853	7.6%
Commission Plan	Yes	7	0.1%
MDOT Attorneys General	Yes	7	0.1%
<i>Subtotal</i>		<i>867</i>	<i>7.8%</i>
Career Service and MTA Union	No	10,302	92.2%
<i>Total MDOT HRS</i>		<i>11,169</i>	<i>100.0%</i>

Total SPMS and MDOT HRS **55,285**

Note: 45 MDOT positions were not classified into standard MDOT employee job service classifications.
Source: Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: SB 760 (Senator Middleton) - Finance.

Information Source(s): Department of Budget and Management, Governor's Office, Maryland State Department of Education, Department of Human Resources, Department of Health and Mental Hygiene, Maryland Department of Transportation, Department of Legislative Services

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