

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 759 (Delegate G. Clagett)
 Appropriations

State Personnel - Employment Categories, Modifications, and Reports

This bill implements many 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. In addition, the bill abolishes the Legislative Joint Committee on Fair Practices and creates in its place, the Joint Committee on State Employment Practices. Furthermore, the bill repeals the authority of the Secretary of Budget and Management to designate those positions that perform a significant policy role or provide direct support to a member of the executive service as a special appointment.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund expenditures in the Department of Budget and Management (DBM) increase by approximately \$121,000 in FY 2010 and \$56,000 in FY 2011 to hire two full-time contractual employees for 18 months 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 | 121,000 | 55,800 | 0 | 0 | 0 |
| Net Effect | (\$121,000) | (\$55,800) | \$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 of Political Management Service Employees

The bill requires the Secretary of Budget and Management to delineate the State Personnel Management System (SPMS) political and nonpolitical management service positions. The bill specifies that a management service position may be filled with regard to political affiliation, belief, or opinion if it is determined that the position relates to political interests and requires input into the policymaking process. Positions that provide access to confidential information and require substantial intervention or collaboration in the formulation of public policy, as well as those that 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.

Furthermore, the Secretary of Budget and Management must submit an annual report to the Governor and the General Assembly that identifies the total number of management service positions designated with regard to political affiliation.

Changes to Professional Service Classification

The bill expands the definition of professional service to include those positions that primarily have direct responsibility for personnel oversight and do not have a significant policymaking or executive service support role.

An appointing authority is allowed to forego the SPMS position selection plan and recruit for a professional service position if:

- no list of eligible candidates for a position exists;
- the position is difficult to fill from a list of positions;
- the recruitment must occur in a timely manner; and
- DBM is notified.

Nevertheless, a recruitment and appointment must occur according to the guidelines issued by the Secretary of Budget and Management.

Changes to Special Appointment Designation

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

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 employees hired after June 30, 1995;
- 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;
- noncertified teachers employed by an institution managed by the Department of Juvenile Services;
- Division of Labor and Industry safety inspectors and staff; and
- Maryland Historical Trust positions.

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 employees (with specified employment information), in their respective personnel management systems, who are employed 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.

Joint Committee on State Employment Practices

The bill also repeals the Legislative Joint Committee on Fair Practices and establishes a Joint Committee on State Employment Practices. 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 appeal 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 the Department of Business and Economic Development, 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;
- 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 of Delegates, 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.

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> |
| Total SPMS | | 44,116 | 100.0% |
| 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% |
| Total MDOT HRS | | 11,169 | 100.0% |
| 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

State Fiscal Effect: DBM advises that the bill requires the agency to delineate between political and nonpolitical management service positions; reevaluate supervisory positions in the management service for new professional service criteria; establish new guidelines for recruitment of specified professional service positions; and 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.

DBM advises that it cannot absorb the additional work with existing resources and requires two full-time human resources analysts. The positions are temporary, 18-month assignments. DLS concurs.

| | |
|---|------------------|
| Contractual Positions | 2 |
| Salaries and Fringe Benefits | 109,150 |
| Additional Equipment and Supplies | <u>11,820</u> |
| Total FY 2010 State Expenditures | \$120,970 |

DLS can staff the Joint Committee on State Employment Practices within existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Department of Budget and Management; Governor's Office; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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ncs/rhh

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