

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 1001

(Senator Muse)

Finance

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State Personnel - Grievances - Inclusion of Disputes about Counseling  
Memoranda

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This bill specifies that, for purposes of provisions of law governing grievance procedures for an employee in the State Personnel Management System (SPMS), “grievance” includes a dispute regarding a counseling memorandum that has been issued to such an employee. The bill also repeals a provision of law that limits the action that such an employee may take in response to a counseling memorandum.

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Fiscal Summary

**State Effect:** State expenditures (all funds) increase for all SPMS agencies beginning in FY 2013 to reflect additional staffing and hearing costs resulting from additional grievances filed and heard. Exact costs cannot be reliably estimated at this time, as discussed below, but may be significant.

**Local Effect:** The bill does not directly affect local government operations or finances.

**Small Business Effect:** None.

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Analysis

**Current Law/Background:** “Grievance” means a dispute between an employee and an employer about the interpretation of, and application to, the employee of (1) a personnel policy or regulation adopted by the Secretary of Budget and Management; or (2) any other policy or regulation over which management has control. “Grievance” does not include a dispute about a mid-year performance appraisal or an oral reprimand or counseling.

Grievance procedures established in the State Personnel and Pensions Article apply to all permanent employees in SPMS within the Executive Branch, with specified exceptions. In general, the three steps available to a grievant in the grievance process are (1) the initiation of a grievance procedure; (2) an appeal to the head of the principal unit; and (3) an appeal to the Secretary of Budget and Management. If a grievance remains unsettled, the Secretary must refer the grievance to the Office of Administrative Hearings (OAH), which is required to dispose of (or conduct a hearing on) each grievance received from the Secretary. Any costs incurred by OAH for the appeal of a grievance must be paid by the principal unit that employs the grievant. Currently, OAH's cost per hearing is approximately \$2,500.

The issuance of a counseling memorandum is an instructional communication and is not considered a disciplinary action. An employee may, within five days after receiving a counseling memorandum, submit to the employee's appointing authority a written response to be placed in the employee's file and attached to any record of the memorandum. Otherwise, an employee may not take any action in response to a counseling memorandum.

**State Expenditures:** State expenditures (all funds) increase significantly for all SPMS agencies beginning in fiscal 2013 to reflect additional staffing and hearing costs resulting from additional grievances filed and heard. The Department of Public Safety and Correctional Services (DPSCS), the Maryland State Department of Education (MSDE), the Maryland Department of the Environment, and the Department of Juvenile Services each advise of the need to hire between one and four additional employees to process additional grievances and prepare for subsequent hearings under the bill. Each of these agencies further advises that it expects to incur significant hearing costs (at approximately \$2,500 per hearing) due to increased administrative hearings stemming from the additional grievances.

The Department of Budget and Management (DBM) advises that, in fiscal 2011, 187 grievances were unresolved at the agency of origin. Of these, 116 were resolved at DBM settlement conferences and 71 were forwarded to OAH for a contested hearing. DBM further advises that written reprimands (currently the lowest form of disciplinary action that may be aggrieved) comprise approximately 28% of the total number of appeals that are forwarded to DBM. Assuming that counseling memoranda are aggrieved at a similar rate, DBM advises that at least one part-time employee is needed to assist with additional grievances and settlement conferences under the bill.

Legislative Services advises that exact costs to each agency will depend on the number of counseling memoranda issued; the number of these that are aggrieved; and the number of these that are resolved at the agency, resolved at DBM settlement conferences, or forwarded to OAH for contested hearings. These factors may vary widely among the

various agencies; for example, DPSCS advises that it issues approximately 1,340 counseling memoranda each year, while MSDE estimates that it issues just 56 counseling memoranda annually. In addition, the number of grievances that are resolved at the agency level is unclear. Thus, Legislative Services advises that exact costs to each agency cannot be reliably estimated at this time but may, depending on the factors described above, be significant.

OAH advises that it handled 52 grievance cases involving an appeal of a written reprimand in fiscal 2011 and that it can likely use existing resources to handle additional cases arising under the bill.

**Additional Comments:** Several agencies advise that the bill may result in less frequent use of counseling memoranda as a means of providing employee feedback or instruction. DBM advises that employees are currently restricted from aggrieving counseling memoranda in recognition that the memoranda are instructional, rather than punitive, in nature.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, Department of Business and Economic Development, Department of Budget and Management, Department of Human Resources, Department of Natural Resources, Maryland Department of Planning, Maryland State Department of Education, Maryland Department of the Environment, Department of General Services, Department of Housing and Community Development, Department of Health and Mental Hygiene, Department of Juvenile Services, Department of State Police, Office of Administrative Hearings, Department of Public Safety and Correctional Services, Department of Veterans Affairs, Department of Legislative Services

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