

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 455

(Senator Middleton, *et al.*)

Finance

Appropriations

State Personnel - Special Appointments - Status

This bill repeals the special appointment status for certain employees of the Office of the Attorney General (OAG) and the Maryland Correctional Enterprises (MCE). OAG staff who are not attorneys or who do not provide direct support to the Attorney General or to specified positions within OAG are no longer designated as special appointments. Even so, the Attorney General retains existing recruitment authority for positions *currently* designated as special appointments within the office. The bill also clarifies that only managerial, supervisory, and confidential positions within MCE remain special appointments and that MCE may hire individuals and inmates consistent with current policies and practices. Positions that lose their special appointment status under the bill retain that status until they become vacant.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The Department of Budget and Management (DBM) can handle any resulting position reclassifications and any increase in grievances or disciplinary actions filed with existing budgeted resources. Potential administrative and operational effect on OAG and MCE to the extent that the change in status affects hiring, promotion, and disciplinary procedures. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Special Appointments: Special appointments within the State Personnel and Management System (SPMS) are employees who:

- are appointed directly by the Governor to a position that is not provided for in the State Constitution;
- are appointed directly by the Board of Public Works;
- as determined by the Secretary of Budget and Management, perform a significant policy role or provide direct support to a member of the executive service;
- are assigned to the Government House (the Governor's residence);
- are assigned to the Governor's office; or
- are in positions specified by law to be special appointments.

Collective bargaining laws do not apply to special appointments, most of whom are considered at-will employees who serve at the discretion of the appointing authority and may be terminated with or without cause. However, special appointments within the Central Collection Unit, Office of Administrative Hearings, and Maryland State Department of Education are not considered at-will positions because they may be terminated only for cause and subject to due process procedures established in their respective authorizing statutes.

Special appointments are the only positions in the Executive Branch that may be filled with regard to political affiliation, but most are not. Positions that may be filled with regard to political affiliation must be so designated and disclosed to the appointee.

All positions within MCE and OAG are designated in statute as special appointments, except for office clerks and secretaries in MCE that are not otherwise designated as special appointments. The positions may not be filled with regard to political affiliation, except for designated senior management positions within OAG.

Service Fees: Chapter 187 of 2009 authorizes the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization must pay the service fee if a fee is successfully negotiated. Likewise, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee.

Employees may not be required to pay a service fee due to specified religious objections. However, such employees are required to pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization. To receive this exemption, employees must provide proof of payment to the exclusive representative and DBM.

Background: As is the case with MCE and OAG, the vast majority of special appointments are so designated by statute rather than by the Secretary of Budget and Management.

There are currently 4,138 at-will special appointments within SPMS, of which 336 (8%) are political appointments.

MCE, formerly State Use Industries, is established in statute as a self-supporting entity that provides meaningful work experiences for inmates intended to improve their work habits, attitudes, and skills to enhance their employability upon release. It is charged with operating in an environment that resembles as closely as possible the environment of private-sector business operations.

Individuals who are hired into the affected positions are not special appointees and, therefore, are subject to collective bargaining as well as other personnel management procedures that do not affect special appointments, including merit hiring, probation, and disciplinary procedures. As a result, they have to pay either union membership dues or a service fee negotiated by exclusive employee representatives. Fees vary across bargaining units; the fee assessed by the American Federation of State, County, and Municipal Employees, which represents the largest group of State employees, is \$10.80 per biweekly pay period, or \$281 per year. Current employees in these positions do not have to pay the dues or fees because they retain their special appointment status until they separate from employment.

State Fiscal Effect: OAG estimates that 163 positions are affected by the bill, and MCE estimates that 55% of its positions are affected, but these estimates are subject to change following a more thorough assessment of the status of current positions. Thus, human resource personnel within OAG and MCE may require additional training to implement appropriate hiring and disciplinary procedures for staff in merit positions. That training can be provided with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 526 (Delegate Clagett, *et al.*) - Appropriations.

Information Source(s): Department of Budget and Management, Department of Public Safety and Correctional Services, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2012
mc/ljm Revised - Senate Third Reader - April 2, 2012

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510