

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 928
 Appropriations

(Delegate Kramer)

Finance

State Personnel - Individuals With Disabilities - Hiring Preferences

This bill requires all appointing authorities in the State Personnel Management System (SPMS) to apply a credit of five points on a selection test for an applicant with a disability, as defined by the federal Americans with Disabilities Act. Appointing authorities in the Executive Branch that are not in SPMS must develop an equivalent hiring preference. Additionally, the bill repeals the requirement that all appointing authorities in SPMS apply a credit of two points for an applicant who is an eligible veteran who has a service-connected disability.

Fiscal Summary

State Effect: General fund expenditures for the Department of Budget and Management (DBM) increase by between \$6,000 and \$20,000 in FY 2017 to reprogram its personnel management system to delete the hiring preference for eligible veterans with service-connected disabilities and to add a five-point hiring preference credit for individuals with disabilities. No effect on revenues.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	13,000	0	0	0	0
Net Effect	(\$13,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: SPMS has four major employment categories designated in statute:

1. executive service, which consists of chief administrators of principal units or comparable positions, including deputy secretaries or assistant secretaries;
2. management service, which consists of positions that involve direct responsibility for the oversight and management of personnel and financial resources and that require the exercise of discretion and independent judgment;
3. professional service, which consists of positions that require advanced knowledge in a field of science or learning and that normally require a professional license, advanced degree, or both; and
4. skilled service, which consists of all other positions.

When a skilled service or professional service position within SPMS is to be filled, a unit has to prepare a position selection plan that includes, among other requirements, a plan of development of any selection test to be administered to qualified applicants. Job announcements for these positions must also describe the type of selection test to be administered to applicants who meet the position's minimum requirements. Appointing authorities may use any appropriate selection process to rate qualified applicants, including job relatedness, reliability, and scores on selection tests. Selection tests must be free of charge to applicants and open to all qualified applicants, except to those who falsify information on an application.

Credits may be applied to the results of selection tests for applicants who are otherwise qualified and have at least the minimum passing score on a selection test for:

- current State employees (one-quarter point for each year of State service, up to 5 points);
- veterans and spouses of veterans (10 points, plus 2 points for a disabled veteran or former prisoner of war);
- residents of high unemployment counties for specified positions in correctional facilities (5 points); and
- State residents (5 points).

Based on all appropriate standards used, the appointing authority must place all candidates in the following categories: (1) best qualified; (2) better qualified; (3) qualified; (4) unsatisfactory; and (5) three additional categories related to special circumstances. Candidates are to be listed by random order within each category.

Equal Employment Opportunity Law

State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. The State and local governments are considered employers.

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it tries to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

Background: According to the U.S. Census Bureau, in 2014, approximately 145,000 individuals with a disability were employed year-round in the State, of whom about 53% were employed full time. Approximately 24,400 individuals with a disability were unemployed, and 167,500 were not in the labor force. The median earnings in Maryland in 2014 of a worker with a disability were \$27,072, while the median earnings of a worker without a disability were \$40,583.

State Fiscal Effect: Under the bill, the assignment of a hiring preference is required only in instances where an applicant is otherwise qualified for the job. The assignment of any type of hiring preference credit that is unrelated to an individual's qualification for the job, including the preference provided by the bill, means that qualified applicants may be placed in a higher qualification level than they would otherwise be (*e.g.*, from "better qualified" to "best qualified"). This could have a negative effect on the quality of State hires and their ability to perform the work, in that candidates who receive the preference may be hired over candidates who are more qualified. Additionally, DBM advises that including an additional hiring credit could further dilute the value of the testing process and the

preference given to those already eligible for a hiring credit. Verifying applicants' eligibility for the hiring credit could delay the State's hiring process.

DBM advises that removing the credit for an eligible veteran who has a service-connected disability and adding a five-point hiring preference credit for individuals with disabilities requires DBM to reprogram its personnel management system at a cost of between \$6,000 and \$20,000, based on previous enhancements. Expenditures for the Maryland Department of Transportation and the University System of Maryland (USM) are not materially affected.

Additional Comments: Counsel to the General Assembly advises that, under *one* interpretation of the Autonomy Act reflected in a 1978 Opinion of the Attorney General, USM and other four-year public institutions of higher education are not subject to the requirements of State laws relating to State government entities unless those laws specifically state that they apply to those institutions. Under this interpretation, it is possible that the bill's reference to "an appointing authority for a position in the Executive Branch of State government" does not apply to USM or other public postsecondary institutions in the State.

Additional Information

Prior Introductions: None.

Cross File: SB 818 (Senator Peters) - Finance.

Information Source(s): Office of the Attorney General, University System of Maryland, Department of Budget and Management, Maryland Department of Transportation, Maryland Department of Disabilities, U.S. Census Bureau, U.S. Equal Employment Opportunity Commission, Department of Legislative Services

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